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As filed with the Securities and Exchange Commission on June 14, 2005

Registration No. 333 - 124197

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

# AMENDMENT NO. 1 TO
# FORM S-1
# REGISTRATION STATEMENT
***UNDER***
***THE SECURITIES ACT OF 1933***

# AtriCure, Inc.

**(Exact name of Registrant as specified in its charter)**

| **Delaware** | **3841** | **34-1940305** |
|---|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(Primary Standard Industrial Classification Code Number)** | **(I.R.S. Employer Identification Number)** |

**6033 Schumacher Park Drive**
**West Chester, OH 45069**
**(513) 755-4100**
**(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)**

**David J. Drachman**
**President and Chief Executive Officer**
**AtriCure, Inc.**
**6033 Schumacher Park Drive**
**West Chester, OH 45069**
**(513) 755-4100**
**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

***Copies to:***

| **Theodore L. Polin** | **Alan D. Schnitzer** |
|---|---|
| **Epstein Becker & Green, P.C.** | **Simpson Thacher & Bartlett LLP** |
| **250 Park Avenue** | **425 Lexington Avenue** |
| **New York, New York 10177** | **New York, New York 10017** |
| **(212) 351-4500** | **(212) 455-2000** |

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

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

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. ☐

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

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

**Subject to Completion, dated June 14, 2005**

**PRELIMINARY PROSPECTUS**

# Shares


# AtriCure, Inc.

## Common Stock

This is the initial public offering of our common stock. No public market currently exists for our common stock. We are offering shares of the common stock offered by this prospectus. We expect the public offering price to be between $ and $ per share.

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

**Investing in our common stock involves a high degree of risk. Before buying any shares, you should carefully read the discussion of material risks of investing in our common stock in " Risk Factors" beginning on page 9 of this prospectus.**

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

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

We and certain of our shareholders have granted the underwriters an option to purchase up to an additional shares of our common stock at the public offering price, less underwriting discounts and commissions, to cover over-allotments, if any, within 30 days from the date of this prospectus. If the underwriters exercise this option in full, the total underwriting discounts and commissions payable by us will be $ , the total proceeds, before expenses, to us will be $ , the total underwriting discounts and commissions payable by the selling shareholders will be $ and the total proceeds, before expenses, to the selling shareholders will be $ . We will not receive any proceeds from the sale of up to shares of common stock to be sold by the selling shareholders if the underwriters exercise this option.

The underwriters are offering the common stock as set forth under "Underwriting." Delivery of the shares will be made on or about , 2005.

**UBS Investment Bank** **Piper Jaffray**

**Thomas Weisel Partners LLC** **A. G. Edwards**

, 2005

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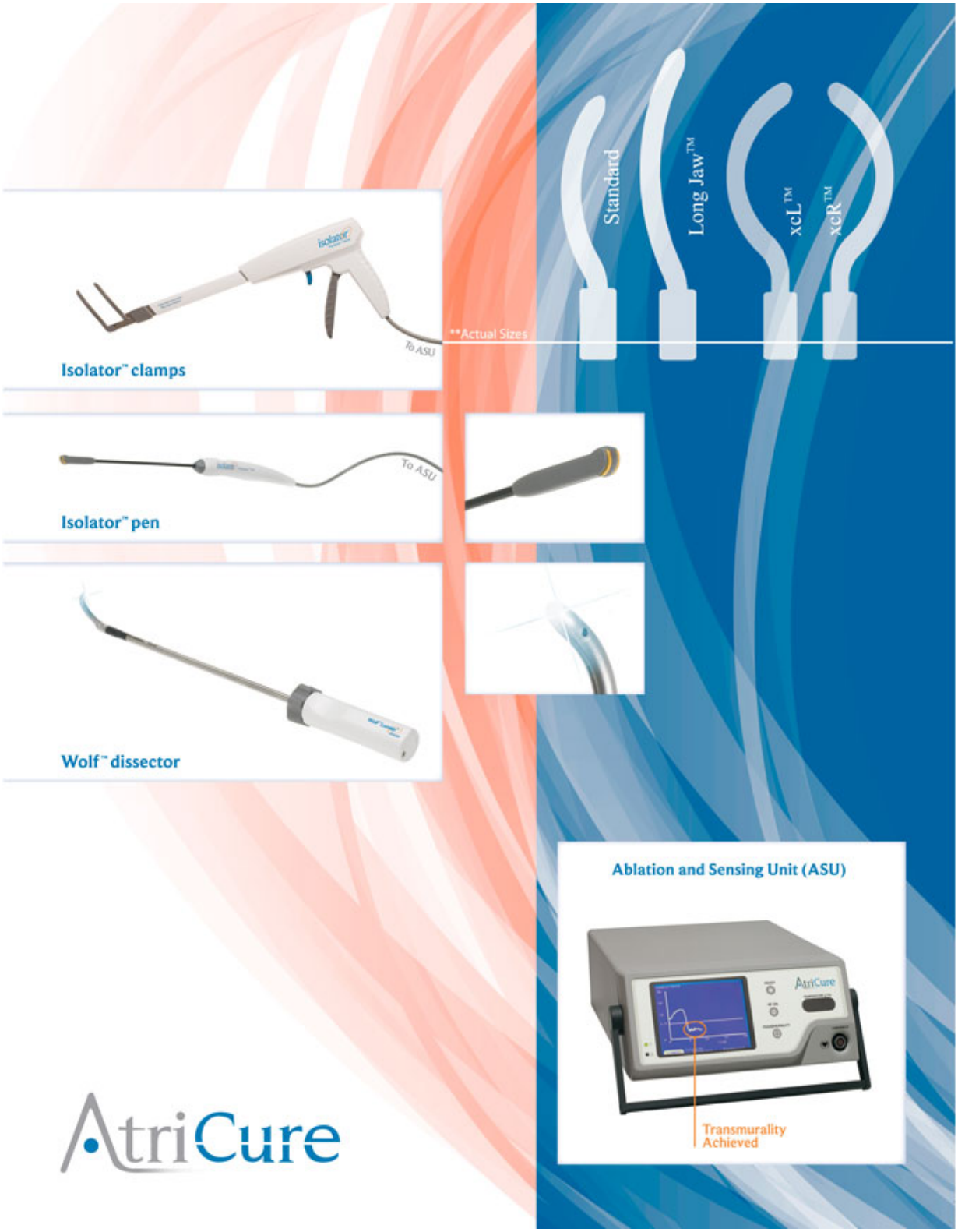

You should rely only on the information contained in this prospectus. Neither we, nor the underwriters, have authorized anyone to provide you with additional information or information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of shares of our common stock.

Through and including , 2005 (the 25th day after the date of this prospectus), federal securities laws may require all dealers that effect transactions in our common stock, whether or not participating in this offering, to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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AtriCure is a registered trademark of AtriCure, Inc. All other service marks, trademarks and trade names referred to in this prospectus are the property of their respective owners. Unless the context requires otherwise, the words "AtriCure," "we," "Company," "us" and "our" refer to AtriCure, Inc. Contemporaneously with the closing of this offering, we expect to acquire Enable Medical Corporation, which we refer to as "Enable." Except where otherwise noted, this prospectus reflects the acquisition of Enable. For purposes of this prospectus, the term "shareholder" shall refer to the holders of our common stock.

All share amounts and per share information in this prospectus have been adjusted to reflect a -for- reverse split of our common stock that we intend to effect prior to this offering.

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

## SUMMARY

*This summary highlights selected information appearing elsewhere in this prospectus and does not contain all the information you should consider before investing in our common stock. You should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, including the section entitled "Risk Factors," and our financial statements and related notes and our pro forma financial statements and related notes beginning on page F-1.*

### Our Business

We develop, manufacture and sell innovative surgical devices designed to create precise lesions, or scars, in soft tissues. Medical journals have described the adoption by leading cardiothoracic surgeons of the AtriCure bipolar ablation system as a standard treatment alternative during open-heart surgical procedures to safely, rapidly and reliably create lesions in cardiac, or heart, tissue to block the abnormal electrical impulses that cause atrial fibrillation, or AF, a rapid, irregular quivering of the upper chambers of the heart. AF is associated with an increased risk of stroke and is often accompanied by such symptoms as fatigue, shortness of breath and heart palpitations.

Cardiothoracic surgeons have adopted our system to treat AF in over 16,000 patients since its general commercial release in the United States in January 2003. We believe that the AtriCure bipolar ablation system is currently a market leader in the treatment of AF during open-heart surgical procedures, such as bypass or valve surgery, and our system is also being evaluated in independent clinical studies as a sole-therapy (not in connection with a separate open-heart procedure) minimally invasive treatment for AF. Our system is currently being used in 22 of the 25 highest volume heart centers in the United States. Our total revenues for the year ended December 31, 2004 were approximately $19.2 million, the second full year of general sales of our system. We do not believe that our system is currently being used for its FDA-cleared indications, and, accordingly, substantially all of our revenues are currently generated through the non-FDA-approved, or off-label, use of our system for the treatment of AF.

The Food and Drug Administration, or FDA, has cleared the AtriCure bipolar ablation system for the ablation, or destruction, of soft tissues in general and non-cardiac related surgical procedures but to date has not cleared our system for cardiac use or approved our system for the treatment of AF. In December 2004, we requested clearance from the FDA for use of our system to ablate cardiac tissue, which currently remains under consideration by the FDA. After conducting necessary clinical trials, we intend to seek FDA approval as early as 2008 or 2009 for the use of our system to treat AF, which we view as our market opportunity.

### Our Market

AF is the most common sustained cardiac arrhythmia, or irregular heartbeat, encountered in clinical practice and accounts for more doctor visits and hospital days than any other cardiac arrhythmia. Studies show that one in four people over the age of 40 in the United States has a lifetime risk of developing AF, and the incidence of AF increases with age. More than five million people worldwide, including more than 2.5 million Americans, are currently afflicted with AF. According to the American Heart Association, 15% of the estimated 700,000 strokes that occur annually in the United States are attributable to AF and people with AF are approximately five times more likely to have a stroke. According to the National Center for Health Statistics, AF accounts for an estimated 1.4 million outpatient visits and more than 227,000 hospitalizations annually in the United States. It is estimated that AF accounts for more than $6 billion in healthcare costs each year in the United States.

According to the Centers for Disease Control and Prevention, the number of diagnosed AF cases in the United States will continue to increase. AF is an underdiagnosed condition due in large part to the fact that patients with AF often have mild or no symptoms, and their AF is only diagnosed when they seek treatment for an associated condition, such as a stroke or heart disease. We believe that increasing awareness of AF and

improved diagnostic screening will result in an increase in the number of patients diagnosed with AF. Also, since the prevalence of AF increases with age, there will likely be an increase in the number of diagnosed AF patients in the United States as the population ages.

Doctors typically begin treating AF with drugs, which are often ineffective, not well tolerated and may be associated with serious side effects. Patients who cannot effectively be treated with drugs occasionally undergo catheter-based procedures to treat their AF, but catheter-based procedures have not been widely adopted because they are technically challenging, can be associated with serious complications and yield inconsistent results. Implantable devices, such as pacemakers and defibrillators, are sometimes used to reduce the frequency and symptoms of AF, although they do not treat the underlying disease. In the past, an open-heart surgical procedure known as the classic Maze was used to treat AF, but this procedure has not been widely adopted because it is technically challenging, highly invasive and involves long recovery times.

Because the FDA has not cleared or approved our system for the ablation of cardiac tissue or the treatment of AF, we and others acting on our behalf may not promote our system for these uses, make any claim that our system is safe and effective for these uses or train doctors to use our system for these uses. However, these restrictions do not prevent doctors from choosing to use our system for the treatment of AF or prevent us from engaging in sales and marketing efforts that focus only on the general attributes of our system and not on the ablation of cardiac tissue or the treatment of AF.

**Our Solution**

We believe that traditional surgical and catheter-based ablation devices are not able to safely, rapidly and reliably create the transmural lesions required to block the abnormal electrical impulses that cause AF. Independent clinical studies conducted at prominent cardiac care centers show that cardiothoracic surgeons have adopted the AtriCure bipolar ablation system for the treatment of AF during elective open-heart surgical procedures. These studies indicate that one of the reasons for our system's high market penetration and rapid adoption is that it allows cardiothoracic surgeons to simplify the classic Maze procedure with a faster, less invasive and less technically challenging approach that appears to have comparable effectiveness. Our system is also being evaluated in independent clinical studies by leading cardiac surgeons as a sole-therapy minimally invasive treatment for AF.

Independent, preliminary clinical studies are being conducted at leading cardiac care centers, including the Cleveland Clinic and Washington University, to demonstrate the efficacy, ease of use and safety of our system:

- *Efficacy.* Approximately 90% of the study participants treated for AF using our system were free of AF at six-month follow-up. We are seeking to confirm these results in the FDA-approved clinical study that we have initiated on the use of our system during elective open-heart surgery and in the sole-therapy minimally invasive study that we anticipate initiating upon obtaining FDA authorization.
- *Ease of Use.* Cardiothoracic surgeons reported that our system was easy to use, based in part on the design and automated features of our ablation and sensing unit, or ASU. Our ASU does not require the surgeon to make any prior settings or adjustments and signals the surgeon when the targeted tissue no longer conducts energy, indicating that the lesion is transmural, or full-thickness. In these studies, surgeons found that it takes only seconds to create transmural lesions that are required to block the abnormal electrical impulses that cause AF.
- *Safety*. Our system was found to be a safe treatment alternative for the surgical treatment of AF. Cardiothoracic surgeons participating in these studies concluded that our system reduced the risk of

blood clots, strokes and damage to adjacent anatomical structures due to its design, which confines the delivery of energy to within the jaws of the handpiece and allows the surgeon to control the application of energy to the tissue targeted for ablation.

We cannot assure you that we will receive FDA clearance for the ablation of cardiac tissue or approval for the treatment of AF. If the lack or FDA clearance or approval were to prevent sales of our system, we would lose all or substantially all of our revenues and would require significant financing to conduct the necessary clinical trials and sustain our operations until sales could resume.

**Our Strategy**

Our mission is to expand the treatment options for those patients who suffer from AF through the continued development of our proprietary technology platform and the education of medical professionals concerning our unique technologies. The key elements of our strategy include:

- *Form Investigational Relationships with Key Opinion Leaders at Leading Institutions.* We have formed investigational relationships with key opinion leaders at several leading cardiac care centers, such as the Cleveland Clinic, the Mayo Clinic, Brigham and Women's Hospital, Washington University and the University of Cincinnati. To date, there have been approximately 15 peer-reviewed publications that describe our system's ability to create cardiac lesions in order to treat AF. We believe that these publications, and the presentations given by key opinion leaders, have contributed to the adoption of our system as a standard treatment alternative for AF during open-heart surgical procedures.
- *Provide Product Education.* We have recruited and trained sales professionals who have strong backgrounds in the medical device field to effectively communicate to doctors the unique features and benefits of our technology as they relate to the ablation of soft tissues.
- *Introduce and Expand Adoption of Our Sole-Therapy Minimally Invasive Procedure.* There is currently no widely adopted sole-therapy treatment to cure AF. Independent investigators are collecting clinical data, including data as to safety and efficacy, to evaluate our system as a sole-therapy minimally invasive AF treatment, and, to date, our system has been used successfully in over 200 sole-therapy minimally invasive procedures to treat AF.
- *New Product Innovation.* We intend to leverage our leadership position in open-heart surgical ablation and expand our technology platform to provide a widely adopted solution for a sole-therapy minimally invasive AF treatment. In addition, we are currently developing a product that will enable surgeons to mechanically isolate a portion of the heart known as the left atrial appendage, which is believed to be responsible for the majority of AF-related strokes. We believe that the successful development of our left atrial appendage technology will add to the demand for surgical AF treatment by offering patients a one-step solution to AF treatment and stroke reduction. Additionally, we are pursuing business development opportunities that will expand our technologies and capabilities to provide additional solutions for the treatment of AF.

**Acquisition of Enable Medical Corporation**

Contemporaneously with the closing of this offering, we anticipate acquiring Enable Medical Corporation, the manufacturer of our Isolator handpieces, which are an essential component of the AtriCure bipolar ablation system. We believe that our acquisition of Enable will provide us with better control over research, development and manufacturing activities and improve our margins, especially as we intend to expand the types and quantities of our products manufactured and sold. The $6.5 million to $7.0 million aggregate purchase price for Enable, of which $0.5 million has been paid to date, was determined by negotiations between special committees of disinterested directors of Enable and us, but no opinion as to fairness of the terms was obtained from an investment banking firm. See "Business—Acquisition of Enable Medical Corporation."

Three of the members of our board of directors, directly or indirectly, hold an aggregate of approximately 63% of the outstanding common stock of Enable and, accordingly, will receive a majority of the amounts that we pay to acquire Enable. One of these three directors, Michael Hooven, our Chief Technology Officer, is also a director, an officer and a shareholder of Enable. See “Certain Relationships and Related Party Transactions—Enable Medical Corporation.”

**Risks Associated With Our Business**

We are subject to a variety of risks related to our competitive position and business strategy. For example, we expect that sales of the AtriCure bipolar ablation system will account for substantially all of our revenues for the foreseeable future. We do not believe that doctors are using the AtriCure bipolar ablation system for any purpose other than the surgical treatment of AF, and such use is an off-label indication for which our system has not received approval or clearance from the FDA. Until we receive approval from the FDA, we are prohibited from marketing or promoting our system for the treatment of AF and from engaging in the training of doctors in the use of our system for the treatment of AF. We cannot guarantee that the FDA will ever approve our system for the treatment of AF. In addition, there are liability risks associated with the off-label use of our system as well as a lack of long-term clinical data as to the safety and effectiveness of our system and the safety and effectiveness of the surgical treatment of AF. See “Risk Factors” beginning on page 9 for a discussion of various factors you should consider before investing in our common stock.

**Corporate Information**

We were incorporated in Delaware as AtriCure, Inc. on October 31, 2000 in connection with a spin-off transaction from Enable, in which shares of our common stock were given to the Enable stockholders. Our principal executive offices are located at 6033 Schumacher Park Drive, West Chester, OH 45069, and our telephone number is (513) 755-4100. Our website is located at *http://www.atricure.com*. We do not intend for the information contained on our website to be incorporated by reference into, or to form any part of, this prospectus.

**The Offering**

| | |
|---|---|
| Common stock offered: | |
| By us | shares ( shares if the over-allotment option is exercised in full) |
| By selling shareholders | shares if the over-allotment option is exercised in full |
| Total | shares ( shares if the over-allotment option is exercised in full) |
| Common stock to be outstanding after this offering | shares ( shares if the over-allotment option is exercised in full) |
| Estimated initial public offering price per share | $ to $ |
| Use of proceeds | We estimate that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full, assuming an initial public offering price of $ per share. We expect to use $6 million, or $6.5 million if the closing occurs after July 1, 2005, of the net proceeds of this offering to acquire Enable, a related party with which we have a director, certain shareholders and an officer in common, and the remainder for other general corporate purposes, including repayment of any amounts outstanding under our credit facility. As of May 31, 2005, no amounts were outstanding under our credit facility. We will not receive any proceeds from any sale of common stock by the selling shareholders. See "Use of Proceeds." |
| Dividend policy | We have never declared or paid any cash dividends on our capital stock and do not intend to pay dividends on our capital stock in the foreseeable future. |
| Proposed NASDAQ National Market symbol | "ATRC" |

All share amounts and per share information in this prospectus have been adjusted to reflect a -for- reverse split of our common stock that we intend to effect prior to the closing of this offering. In addition, unless otherwise indicated, all share information in this prospectus assumes:

- the amendment and restatement of our certificate of incorporation and bylaws, which will become effective immediately prior to the closing of this offering;
- the conversion, upon closing of this offering, of all of our outstanding shares of preferred stock into shares of our common stock; and
- the underwriters do not exercise their option to purchase up to additional shares of our common stock to cover over-allotments, if any.

The number of shares of our common stock to be outstanding after this offering is based on shares of common stock outstanding as of May 31, 2005 and excludes:

- shares of our common stock issuable upon the exercise of options outstanding as of May 31, 2005, at a weighted average exercise price of $ per share (of which, options to purchase shares of our common stock at a weighted average exercise price of $ per share were exercisable as of that date);

- as of May 31, 2005, shares of our common stock issuable upon the exercise of warrants outstanding at an exercise price of $ per share and shares of our common stock issuable upon the exercise of warrants at an exercise price of $ per share; and
- shares of our common stock reserved for issuance upon the exercise of options available for future grant pursuant to our 2001 Stock Option Plan.

## Summary Historical and Pro Forma Financial Data

The following summary financial data as of and for the years ended December 31, 2001, 2002, 2003 and 2004 have been derived from our audited financial statements. We derived the summary financial data for the three months ended March 31, 2004 and 2005 from our unaudited financial statements. Our operations began October 31, 2000, and we had no revenue and minimal start-up expenses for the period ending December 31, 2000.

The pro forma statement of operations data gives effect to the acquisition of Enable as if it occurred on January 1, 2004 and assumes the conversion, upon closing of this offering, of all of our outstanding shares of preferred stock into shares of our common stock. The pro forma information is based on preliminary estimates, available information, assumptions and valuations that have not yet been completed; however, amounts actually recorded in future periods may be materially different. The summary historical and pro forma financial data set forth below should be read together with the financial statements and the related notes to those statements and the unaudited pro forma combined financial information and related notes, as well as "Management's Discussion and Analysis of Financial Condition and Results of Operations," appearing elsewhere in this prospectus. The information set forth below is not indicative of future results.

| | Year Ended December 31, | | | | Three Months Ended March 31, | | Pro Forma | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | Year Ended December 31, | Three Months Ended March 31, |
| **Statements of Operations Data:** | **2001** | **2002** | **2003** | **2004** | **2004** | **2005** | **2004** | **2005** |
| | (In thousands, except share and per share data) | | | | | | | |
| Revenues: | | | | | | | | |
| Sales of products | $ 20 | $ 1,766 | $ 9,792 | $ 18,946 | $ 3,797 | $ 7,490 | $ 19,400 | $ 7,585 |
| Commissions | — | — | — | 211 | 5 | 8 | 211 | 8 |
| Government grants | — | — | — | — | — | — | 311 | 18 |
| Total revenues | 20 | 1,766 | 9,792 | 19,157 | 3,802 | 7,498 | 19,922 | 7,611 |
| Cost of revenues: | | | | | | | | |
| Product sales | 8 | 681 | 2,612 | 5,202 | 1,090 | 1,920 | 3,921 | 1,344 |
| Billable research & development costs | — | — | — | — | — | — | 104 | 18 |
| Total cost of revenues | 8 | 681 | 2,612 | 5,202 | 1,090 | 1,920 | 4,025 | 1,362 |
| Gross profit | 12 | 1,085 | 7,180 | 13,955 | 2,712 | 5,578 | 15,897 | 6,249 |
| Gross profit percentage | 60.0% | 61.4% | 73.3% | 72.8% | 71.3% | 74.4% | 79.8% | 82.1% |
| Expenses: | | | | | | | | |
| Research and development expenses | 1,838 | 2,721 | 2,501 | 4,422 | 984 | 1,737 | 4,422 | 1,737 |
| Selling, general and administrative expenses(1) | 1,314 | 4,026 | 8,036 | 15,186 | 2,911 | 5,252 | 16,167 | 5,614 |
| Total expenses | 3,152 | 6,747 | 10,537 | 19,608 | 3,895 | 6,989 | 20,589 | 7,351 |
| Loss from operations | (3,140) | (5,662) | (3,357) | (5,653) | (1,183) | (1,411) | (4,692) | (1,102) |
| Preferred stock interest expense | 469 | 2,563 | 3,905 | 3,905 | 976 | 976 | — | — |
| Other interest income (expense)—net | 13 | (806) | 154 | 106 | 29 | 21 | 102 | 24 |
| Income tax expense | — | — | — | — | — | — | 14 | — |
| Net loss available to common shareholders | $ (3,596) | $ (9,031) | $ (7,108) | $ (9,452) | $ (2,130) | $ (2,366) | $ (4,604) | $ (1,078) |
| Net loss per share: | | | | | | | | |
| Basic and diluted(2) | $ (0.54) | $ (1.34) | $ (1.04) | $ (1.36) | $ (0.31) | $ (0.33) | $ | $ |
| Shares used in computing net loss per share: | | | | | | | | |
| Basic and diluted(2) | 6,709,396 | 6,753,652 | 6,807,992 | 6,948,116 | 6,862,200 | 7,149,858 | | |

*(1) Includes a non-cash charge of $327.2 relating to certain employee option grants for the year ended December 31, 2004 and pro forma year ended December 31, 2004, $73.7 for the three months ended March 31, 2005 and pro forma three months ended March 31, 2005 and $58.2 for the three months ended March 31, 2004.*

*(2) Unaudited pro forma net loss per share, basic and diluted, and shares used in computing net loss per share, basic and diluted, have been calculated in accordance with the SEC rules for initial public offerings. Pro forma net income (loss) available to common shareholders has been adjusted to give effect to the elimination of preferred stock interest from net income (loss). Pro forma weighted average shares for purposes of the unaudited pro forma basic net income (loss) per share calculation is based on the number of common shares at an initial public offering price of $ (which is the mid point of the range set forth on the cover) and has been adjusted to give effect to the conversion of all of our outstanding shares of redeemable preferred stock into shares of our common stock, which will become effective at the closing of this offering.*

The following table contains a summary of our balance sheet as of March 31, 2005:

- on an actual basis; and
- on a pro forma basis to give effect to the acquisition of Enable, which is expected to occur contemporaneously with the closing of this offering, the conversion, upon closing of this offering, of all of our outstanding shares of preferred stock into shares of our common stock, the sale of the shares of our common stock we are offering at an assumed initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses to be paid by us, and the application of net proceeds therefrom, as if they had occurred on March 31, 2005. See "Use of Proceeds."

| | As of March 31, 2005 | |
|---|---|---|
| **Balance Sheet Data:** | **Actual** | **Pro forma (unaudited)** |
| | (in thousands) | |
| Cash and cash equivalents | $ 2,452 | $ |
| Working capital | 4,617 | |
| Total assets | 12,408 | |
| Redeemable preferred stock | 37,742 | — |
| Accumulated deficit | (32,009) | |
| Total shareholders' equity (deficit) | (29,316) | |

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our common stock. If any of the following risks actually occur, they may materially harm our business, financial condition and results of operations. In this event, the market price of our common stock could decline and you could lose part or all of your investment.*

### Risks Relating To Our Business

**We expect to derive substantially all of our future revenues from sales of the AtriCure bipolar ablation system. If the AtriCure bipolar ablation system fails to gain or loses market acceptance for the treatment of AF, we may not generate sufficient revenues to continue our operations.**

Currently, our primary product line is the AtriCure bipolar ablation system, which we commercially introduced in 2002 in the United States and in 2003 outside of the United States. We expect that sales of the AtriCure bipolar ablation system will account for substantially all of our revenues for the foreseeable future and that our future revenues will depend on the acceptance by the medical community of the AtriCure bipolar ablation system as a standard treatment alternative for the surgical treatment of AF during open-heart surgical procedures.

Acceptance of our system for the treatment of AF is dependent upon, among other factors, the level of screening for AF and the awareness and education of the medical community about the surgical treatment of AF, in general, and the existence, effectiveness and safety of the AtriCure bipolar ablation system, in particular. Our system and the procedures involved with the treatment of AF using our system are relatively new. We cannot assure you that doctors will continue to use the AtriCure bipolar ablation system that demand for the surgical treatment of AF will not decline or will increase as quickly as we expect.

We may not be able to maintain or increase market acceptance of the AtriCure bipolar ablation system for a number of additional reasons, including:

- our inability to promote our system for use on cardiac tissue or for the treatment of AF until we obtain additional FDA approvals or clearances;
- our inability to train doctors in the use of our system for the ablation of cardiac tissue or for the treatment of AF until we obtain additional FDA approvals or clearances;
- our inability to establish or sustain acceptance of our system within the medical community;
- liability risks for doctors and hospitals associated with the off-label use of our system and the use of new technologies or procedures;
- findings or perceptions relating to the safety or effectiveness of our system or the safety or effectiveness of the surgical treatment of AF;
- medical device reports to the FDA and foreign regulatory authorities, which are required in the event our products malfunction or cause or contribute to a death, serious injury or other adverse event;
- publicity concerning our system, competing products or the surgical treatment of AF;
- the cost of our system;
- the availability of alternative treatments or procedures that may be, or may be perceived as, more effective, safer, faster, easier to use or less costly than our system; and
- policies of healthcare payors with respect to coverage and reimbursement.

Since we do not believe that doctors are using the AtriCure bipolar ablation system for any purpose other than the surgical treatment of AF, if doctors do not use our system to treat AF, we would lose all or substantially all of our revenues.

**Use of the AtriCure bipolar ablation system as a sole-therapy minimally invasive treatment for AF, which is not currently an established market, represents our major growth opportunity. If this market does not develop or our system is not widely adopted for use in this market, it may adversely impact our ability to grow our revenues.**

We believe that sole-therapy minimally invasive treatment for AF, which is not currently an established market, will ultimately represent the largest segment of the market for the surgical treatment of AF. If this market fails to develop, or if our system is not widely adopted for use in this market, it may adversely impact our ability to grow our revenues. In order to establish the sole-therapy minimally invasive AF treatment market, doctors treating patients with AF who have no other heart disease requiring an open-heart surgical procedure must change their current practice of referring patients to cardiologists and electrophysiologists and instead refer these patients to cardiothoracic surgeons for surgical AF treatment. Doctors may decide not to change their referral patterns for a variety of reasons including, for example, that limited clinical data is available relating to the safety and effectiveness of our system, that only a limited number of procedures have been performed using our system, that clinical testing of our system is in the feasibility stage, that doctors who refer their patients to cardiothoracic surgeons may risk losing their patients and that doctors may prefer to treat patients using drugs or catheter-based ablation. If doctors do not refer their patients to cardiothoracic surgeons for surgical AF treatment, we will not be able to establish a market for the use of our system for the sole-therapy minimally invasive treatment of AF, and our future growth and revenues will suffer.

**The failure to educate or train a sufficient number of doctors in the use of the AtriCure bipolar ablation system could reduce the market acceptance of our system and reduce our revenues.**

It is critical to the success of our sales efforts to ensure that there are a sufficient number of doctors familiar with, trained on and proficient in the use of our system. While we educate and train doctors as to the skills involved in the proper use of our system and technology, we cannot educate or train them to use our system for the ablation of cardiac tissue or the surgical treatment of AF unless and until we obtain additional FDA approvals or clearances. Currently, doctors learn to use our system for the treatment of AF through independent training programs provided by hospitals and universities and through independent peer-to-peer training among doctors. We provide research and educational grants to institutions, some of which are used to fund programs to teach the procedures involved in the surgical treatment of AF, including the use of our system for such treatment. However, while we make doctors generally aware of these programs, these institutions determine the faculty and the content of the programs independent of our control and influence. We also rely on doctors to independently inform their colleagues about these programs. We cannot assure you that a sufficient number of doctors will become aware of training programs or that doctors will dedicate the time, funds and energy necessary for adequate training in the use of our system.

**Unless we obtain additional FDA approvals or clearances, we will not be able to promote the AtriCure bipolar ablation system to ablate cardiac tissue or to treat AF and our ability to maintain and grow our business could be harmed.**

Generally, a medical device company must first obtain either FDA clearance through the submission to the FDA of a 510(k) notification or FDA approval through the submission of a pre-market approval application, or PMA, before the company may market a medical device in the United States. Certain modifications to a previously marketed device, including a proposed new use or new indication for the device, also require the submission to the FDA of either a 510(k) or PMA before such device with the modifications may be marketed. The process of obtaining these clearances and approvals can be lengthy and expensive. While we have obtained 510(k) clearance to promote the AtriCure bipolar ablation system for ablation and coagulation of soft tissues in certain surgical procedures, we have not received FDA clearance or approval to promote and sell the AtriCure bipolar ablation system for the ablation of cardiac tissue or for use in the treatment of AF. The PMA process is more costly, lengthy and uncertain than the 510(k) process and requires that the device be found to be safe and effective and must be supported by extensive data, including data from preclinical studies and human clinical

trials. Though less likely, a 510(k) application may require human clinical trials as well. Because we cannot assure you that any new products, or any product enhancements, that we develop will be subject to the shorter 510(k) clearance process, significant delays in the introduction of any new products or product enhancement may occur.

The FDA rejected two of our prior attempts to obtain 510(k) clearance for the ablation of cardiac tissue, and our third request is pending. In February 2002, we attempted to obtain 510(k) clearance from the FDA for use of our system for the ablation of cardiac tissue and for the treatment of cardiac arrhythmias, including AF. The FDA found major deficiencies in our submission in that they would not recognize any predicate devices in the treatment of AF, which is necessary in order for the FDA to grant clearance. We also attempted in January 2003 to obtain clearance from the FDA for use of the AtriCure bipolar ablation system to ablate cardiac tissue, and the FDA again found major deficiencies in our submission. We have attempted to address the FDA's concerns in subsequent communications and have recently submitted a new 510(k) notification to obtain clearance from the FDA for use of our system for the ablation of cardiac tissue. The FDA may not grant this clearance, may not grant the clearance in a timely manner or may impose restrictions on any clearance, any of which could negatively affect our business and results of operations. Whether or not the FDA provides clearance for the use of the AtriCure bipolar ablation system to ablate cardiac tissue, we will need to obtain separate approvals from the FDA for use of the AtriCure bipolar ablation system in the treatment of AF as part of an open-heart procedure and as a sole-therapy minimally invasive procedure through the submission of a PMA to the FDA.

We cannot assure you that future clearances or approvals of the AtriCure bipolar ablation system will be granted or that current or future clearances or approvals of the AtriCure bipolar ablation system will not be withdrawn. Failure to obtain a clearance or approval or loss of an existing clearance or approval, could hurt our ability to maintain and grow our business.

**Unless we are able to complete the clinical trials required to support future submissions to the FDA, and unless the data generated by such trials supports the use of our system for the treatment of AF as safe and effective, we may not be able to secure additional FDA clearances or approvals and our ability to maintain and grow our business could be harmed.**

In order to obtain FDA approvals to promote the AtriCure bipolar ablation system for AF treatment, we will need to demonstrate in clinical trials that our system is safe and effective for such use. In order to conduct clinical trials, it is necessary to receive an investigational device exemption, or IDE, from the FDA. While we have obtained the required IDE from the FDA for the conduct of clinical trials for the use of our system as a treatment for AF during open-heart surgical procedures, the FDA or institutional review boards, or IRBs, that also oversee the trials for the purpose of protecting the study subjects can halt clinical trials at any time for safety reasons or because we or any of our clinical investigators do not follow the FDA's requirements for conducting clinical trials. In addition, the FDA may modify its requirements with respect to various aspects of our clinical study, in which case our ongoing clinical trial may not be achievable. Moreover, future clinical trials of our system to treat AF as a sole-therapy minimally invasive procedure will likely proceed in phases beginning with a feasibility trial. We have filed with the FDA for an IDE to conduct a feasibility study relating to the use of the AtriCure bipolar system for the sole-therapy minimally invasive treatment of AF, but we have not received such an IDE and there is no guarantee that the FDA will grant us such an IDE. If we are unable to receive approval to conduct clinical trials or the trials are halted by the FDA or others, we would not be able to promote the AtriCure bipolar ablation system for use in the treatment of AF in the United States.

While we have begun clinical trials to support the submission of our PMA seeking FDA approval to use the AtriCure bipolar ablation system for the treatment of AF during elective open-heart procedures, enrollment in the trial has been slower than expected. To date, we have enrolled only approximately 3% of the patients that are required to be enrolled in this study. We cannot assure you that this clinical trial will be completed in a timely manner or successfully or that the results that are obtained will be acceptable to the FDA.

Clinical trials and regulatory approval of the AtriCure bipolar ablation system for treatment of AF can take a number of years to accomplish and require the expenditure of substantial financial, managerial and other

resources, and we may never obtain regulatory approval for the use of the AtriCure bipolar ablation system in either an open-heart procedure or a sole-therapy minimally invasive procedure. The FDA may not grant clearance to use our system for the treatment of AF in all types of patients that experience AF, if any, or could limit the type of AF that could be treated using our system. If we do not secure required FDA approval to promote the AtriCure bipolar ablation system for either or both types of procedures, our business, results of operations and prospects could be negatively affected as a result.

Further, we cannot make comparative claims regarding the use of the AtriCure bipolar ablation system against any alternative treatments without conducting comparative clinical studies, which would be expensive and time consuming. We do not have any current plans to conduct such comparative clinical studies to evaluate the AtriCure bipolar ablation system against any alternative method of treatment.

If the available data on the use of our system from clinical trials and marketing experience do not establish the safety or effectiveness of our system, our clinical trials may be halted, our products may be withdrawn from the market and we may be prohibited from further distribution and sale of our products.

If the results obtained from our clinical trials, any other clinical studies, or clinical or commercial experience indicate that our system is not safe or effective, or not as safe or effective as other treatment options or than current short-term data would suggest, the FDA may not approve our system for the treatment of AF, adoption of the use of our system for the treatment of AF may suffer and our business would be harmed.

**We may be subject to fines, penalties, injunctions and other sanctions if we are deemed to be promoting the use of our products for non-FDA-approved, or off-label, uses.**

Our business and future growth depend on the continued use of the AtriCure bipolar ablation system in the treatment of AF, which is considered an off-label use of our system because the sole indication for which our system has received FDA clearance is the ablation and coagulation of soft tissues during certain non-cardiac- related surgical procedures. Under the Federal Food, Drug, and Cosmetic Act and other laws, we are prohibited from promoting our system for an off-label use. This means that we may not make claims about the safety or effectiveness of the AtriCure bipolar ablation system for the ablation of cardiac tissue or the treatment of AF and may not proactively discuss or provide information on the use of our system for the treatment of AF, except in certain limited scientific and other settings.

Due to these legal constraints, our sales and marketing efforts focus only on the general technical attributes and benefits of the AtriCure bipolar ablation system and not on the use of our system for AF treatment or other cardiac uses. At the same time, we provide certain support for the use of the AtriCure bipolar ablation system in the treatment of AF that we believe is non-promotional and therefore permitted. In particular, since our system is only being used by doctors for the treatment of AF, we train our sales force on the use of our system by cardiothoracic surgeons to treat AF, and off-label sales are included in our sales force compensation structure. Sales personnel call on doctors to discuss the general attributes of our system and respond in a non-promotional manner to unsolicited requests for information from doctors on the use of our system in the treatment of AF by providing copies of and citations to peer-reviewed journal articles. We have entered into consulting agreements with prominent cardiothoracic surgeons and electrophysiologists who assist us with, among other things, product development and clinical development. In addition, we provide financial support in the form of research and educational grants to several leading institutions in the cardiac field, which they may use to conduct physician training programs, including programs relating to the surgical treatment of AF using our system. We also continue to make improvements in our system for the ablation of cardiac tissue and the treatment of AF.

There is a material risk that the FDA or other federal or state law enforcement authorities could determine that the nature and scope of these activities constitute the promotion of our system for a non-FDA-approved use in violation of the law. We also face the risk that FDA or other regulatory authorities might pursue enforcement based on past activities that we have discontinued or changed, including sales activities, arrangements with institutions and doctors, educational and training programs and other activities.

Government investigations concerning the promotion of off-label uses and related issues are typically expensive, disruptive and burdensome and generate negative publicity. If our promotional activities are found to be in violation of the law or if we agree to a settlement in connection with an enforcement action, we would likely face significant fines and penalties and would likely be required to change substantially our sales, promotion, grant and educational activities. For example, in November 2004, we received a letter from the FDA relating to certain cardiac-related information on our website in connection with the AtriCure bipolar ablation system, which we subsequently removed. There is also a possibility that we could be enjoined from making sales of the AtriCure bipolar ablation system for any non-FDA-approved use, which effectively would bar all sales of our system until we receive FDA clearances or approval, if ever. In addition, as a result of enforcement actions against us or our senior officers, we could be excluded from participation in government healthcare programs such as Medicare and Medicaid.

**The use of products we sell may result in injuries or other adverse events that lead to product liability suits, which could be costly to our business or our customers' business.**

The use of products we sell may result in a variety of serious complications, including damage to the heart, internal bleeding, death, or other adverse events, potentially leading to product liability claims. Serious complications, including death, have been encountered in connection with the surgical treatment of AF, including in connection with a limited number of sole-therapy minimally invasive procedures in which our system was used. Although our manufacturing processes and those of our suppliers are required to comply with the FDA's quality system regulations, or QSR, covering the procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of our products, if products we sell are defectively designed, manufactured or labeled, contain inadequate warnings, contain defective components or are misused, we may become subject to costly litigation by our customers or their patients.

We carry product liability insurance that is limited in scope and amount and may not be adequate to fully protect us against product liability claims. We could be required to pay damages that exceed our insurance coverage. Any product liability claim, with or without merit, could result in an increase in our product liability insurance rates or our inability to secure coverage on reasonable terms, if at all. Even in the absence of a claim, our insurance rates may rise in the future. Any product liability claim, even a meritless or unsuccessful one, would be time consuming and expensive to defend and could result in the diversion of our management's attention from our business and result in adverse publicity, withdrawal of clinical trial volunteers, injury to our reputation and loss of revenues. Any of these events could negatively affect our earnings and financial condition.

**Our current inability to educate or train doctors in the use of the AtriCure bipolar ablation system for the treatment of AF, due to legal prohibitions on off-label promotion of medical devices, could result in injuries to patients or other adverse events that lead to litigation against us which could be costly to our business.**

Our sales team educates doctors in the technology and general application of the AtriCure bipolar ablation system, but we cannot currently educate or train doctors to use our system for the ablation of cardiac tissue or for the surgical treatment of AF. Hospitals and universities offer independent educational programs for the treatment of AF utilizing the AtriCure bipolar ablation system, and there is independent doctor-to-doctor training to use our system for the treatment of AF. We do not require that doctors who use the AtriCure bipolar ablation system have any specific training in the use of our system. We cannot assure you that doctors utilizing our system are using it correctly. Because we rely on training by hospitals and universities and doctor-to-doctor training, we have no control over the quality of the training received by the doctors who use our system. Not requiring training on the use of our system may expose us to greater risk of product liability for injuries occurring during procedures utilizing the AtriCure bipolar ablation system. If demand for the AtriCure bipolar ablation system grows, the increased number of procedures performed using our system may potentially lead to more injuries and an increased risk of product liability. In addition, the off-label use of our system by the doctors may expose us to greater risks relating to product liability claims.

**Serious complications arising out of surgical procedures for the treatment of AF, including surgical AF treatments involving our system, could harm our business in a variety of important ways.**

Serious complications, including death, have been encountered in connection with the surgical treatment of AF, including in connection with a limited number of sole-therapy minimally invasive procedures in which our system was used. The rate of serious complications associated with surgical AF treatments in general, or surgical AF treatments involving the use of our system in particular, may be greater than the rate of serious complications associated with alternative therapies for the treatment of AF or AF itself.

Adverse outcomes, or the perception that surgical AF treatments, including treatments involving the use of our system, are not safe, could harm our business, including in the following ways:

- our system may fail to gain or may lose market acceptance;
- the market for the sole-therapy minimally invasive treatment of AF may fail to develop;
- the medical community may fail to adopt our system for the sole-therapy minimally invasive treatment of AF;
- the FDA or foreign regulatory authorities may revoke the clearances or approvals they have granted for the use of our system for the ablation of soft tissue;
- the FDA or foreign regulatory authorities may refuse, delay or revoke clearances, approvals or clinical trials of our system for the ablation of cardiac tissue or the treatment of AF;
- the FDA or other domestic or foreign regulatory or enforcement authorities may be more likely than otherwise to pursue an action against us for promoting our products for off-label uses; and
- we may be subject to product liability claims.

The significance of each of these identified risks is discussed elsewhere under the caption “Risk Factors—Risks Relating to our Business”.

**Competition from existing and new products and procedures may decrease our market share and cause our revenues to decline.**

The medical device industry, including the market for the treatment of AF, is highly competitive, subject to rapid technological change and significantly affected by new product introductions and promotional activities of other participants. We cannot assure you that the AtriCure bipolar ablation system will compete effectively against drugs, catheter-based ablation, implantable devices such as pacemakers or defibrillators, other bipolar ablation systems or other surgical AF treatments, which may be more well-established among doctors and hospitals. Many companies are promoting devices for the treatment of AF, and we anticipate that new or existing competitors may develop competing products, procedures or clinical solutions. There are few barriers to prevent new entrants or existing competitors from developing products to compete directly with ours. Some companies also compete with us to attract qualified scientific and technical personnel as well as funding. Our primary competitors include Guidant Corp., Medtronic, Inc., St. Jude Medical Inc., Boston Scientific Corporation, Edwards Lifesciences Corporation and CryoCath Technologies Inc. These companies are larger than AtriCure or enjoy competitive advantages, including:

- broader product offerings;
- established and more comprehensive distribution networks;
- less expensive products and procedures that take less time to perform;
- greater resources, including financial resources and more extensive experience in product development, manufacturing, regulatory clearance and approval, promotion, distribution and selling and patent litigation; and
- established relationships with hospitals, healthcare providers and payors.

Some competitors have FDA clearance for the use of their products to ablate cardiac tissue or FDA approval for the use of their products to ablate cardiac tissue during open-heart surgery. Our competitors are currently conducting clinical trials for the use of their products in the treatment of AF, which if successful, may impact the future sales of the AtriCure bipolar ablation system. Furthermore, demand for the AtriCure bipolar ablation system could be diminished by equivalent or superior products and technologies being offered by competitors, including products utilizing bipolar technology which could prove to be more effective, faster, safer or less costly than the AtriCure bipolar ablation system. The introduction of new products, procedures or clinical solutions by competitors may result in price reductions, reduced margins or loss of market share and may render our products obsolete. If our product development fails to maintain pace with our competitors, our net revenues and future profitability could be adversely affected.

**Our intellectual property rights may not provide meaningful commercial protection for our products, which could enable third parties to use our technology or methods, or very similar technology or methods, and could reduce our ability to compete.**

Our success depends significantly on our ability to protect our proprietary rights to the technologies used in our products. We rely on patent protection, as well as a combination of copyright, trade secret and trademark laws and nondisclosure, confidentiality and other contractual restrictions to protect our proprietary technology. However, these legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep any competitive advantage. Our patent applications may not issue as patents at all or in a form that will be advantageous to us. Our issued patents and those that may issue in the future may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products. Although we have taken steps to protect our intellectual property and proprietary technology, we cannot assure you that third parties will not be able to design around our patents or, if they do infringe upon our technology, that we will be successful in or have sufficient resources to pursue a claim of infringement against those third parties. We believe that third parties may have developed or are developing products that could infringe upon our patent rights. Any pursuit of an infringement claim by us may involve substantial expense or diversion of management attention. In addition, although we have entered into confidentiality agreements and intellectual property assignment agreements with our employees, consultants, investigators and advisors, such agreements may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements.

Furthermore, the laws of foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. Foreign countries generally do not allow patents to cover methods for performing surgical procedures. If our intellectual property does not provide significant protection against foreign or domestic competition, our competitors could compete more directly with us, which could result in a decrease in our market share. All of these factors may harm our competitive position.

**The medical device industry is characterized by patent litigation and any litigation or claim against us may cause us to incur substantial costs, could place a significant strain on our financial resources, divert the attention of management from our business and harm our reputation. The medical device industry is characterized by extensive litigation and administrative proceedings over patent and other intellectual property rights.**

Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Any patent dispute, even a meritless or unsuccessful one, would be time consuming and expensive to defend and could result in the diversion of our management’s attention from our business and result in adverse publicity, the disruption of development and marketing efforts, injury to our reputation and loss of revenues. Any of these events could negatively affect our earnings and financial condition.

Our competitors may assert that the AtriCure bipolar ablation system or the methods employed in the use of our system infringe on United States or foreign patents held by them. This risk is exacerbated by the fact that

there are numerous issued and pending patents relating to surgical ablation and the surgical treatment of AF. Because patent applications can take many years to issue, there may be applications now pending of which we are unaware that may later result in issued patents that our system may infringe. There could also be existing patents of which we are unaware that one or more components of our system may inadvertently infringe. As the number of competitors in the market for the treatment of AF grows, the possibility of inadvertent patent infringement by us or a patent infringement claim against us increases.

If a third-party's patents were upheld as valid and enforceable and we were found to be infringing, we could be prevented from selling the AtriCure bipolar ablation system unless we were able to obtain a license to use technology or ideas covered by such patent or are able to redesign our system to avoid infringement. A license may not be available at all or on terms acceptable to us, and we may not be able to redesign our products to avoid any infringement. Modification of our products or development of new products could require us to conduct additional clinical trials and to revise our filings with the FDA and other regulatory bodies, which would be time-consuming and expensive. If we are not successful in obtaining a license or redesigning our products, we may be unable to sell our products and our business could suffer.

**We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of their former employers.**

Many of our employees were previously employed at other medical device companies. Although there are no claims currently pending against us, we may be subject to future claims that these employees, or we, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these former employers. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. If we fail in defending such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A loss of key research or sales personnel or their work product could hamper or prevent our ability to improve our products or sell our existing products, which would harm our business.

**The increase in cost of medical malpractice premiums to doctors and hospitals or the lack of malpractice insurance coverage due to the use of our system by doctors for an off-label indication may cause certain doctors or hospitals to decide not to use our system and may damage our ability to grow and maintain the market for our system.**

Insurance carriers have been raising premiums charged for medical malpractice insurance due, at least in part, to increased risks associated with off-label procedures, including higher damage awards for successful plaintiffs. Insurance carriers may continue to raise premiums or they may deny malpractice coverage for procedures performed using products such as ours on an off-label basis. If this trend continues or worsens, our revenues may fall as doctors or hospitals decide against purchasing the AtriCure bipolar ablation system due to the cost or unavailability of insurance coverage.

**We have a limited history of operations and a history of net losses available to common shareholders and we may never become profitable.**

We have a limited operating history and have incurred net losses each year since our inception, including net losses available to common shareholders of $9.0 million in 2002, $7.1 million in 2003 and $9.5 million in 2004. As of December 31, 2004, we had an accumulated deficit of approximately $29.6 million.

Our net losses available to common shareholders have resulted principally from costs and expenses relating to sales and promotional efforts, research and development, seeking regulatory clearances and approvals, and general operating expenses. We expect to continue to make substantial expenditures and to incur additional operating losses in the future as we expand our sales, manufacturing, marketing and product development activities, increase our administrative staff and further develop and commercialize our products, including

completing clinical trials and seeking regulatory clearances and approvals for the AtriCure bipolar ablation system. If sales of our system do not continue to grow as we anticipate, we will not be able to achieve profitability. Our expansion efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenues sufficiently to offset these higher expenses. Our losses have had, and are expected to continue to have, an adverse impact on our working capital, total assets and shareholders' deficit and we may never become profitable.

**Our federal tax net operating loss carryforwards will be limited or lost, resulting in greater income tax expense because we will experience an ownership change of more than 50 percentage points upon the offering of our common stock hereunder.**

Upon the offering of our common stock, we will experience an ownership change as defined by the Internal Revenue Code of 1986 that will limit the availability of our net operating loss carryforwards to offset any future taxable income, which may increase our future income tax expense. Our inability to use these net operating loss carryforwards to reduce taxable income is based on an ownership change of more than 50 percentage points under rules contained in the United States Internal Revenue Code. We had federal income tax net operating loss carryforwards of approximately $16.3 million at December 31, 2004 that, if not utilized to reduce our taxable income, will begin to expire in 2021.

**Our capital needs after the next 12 months are uncertain and we may need to raise additional funds in the future and such funds may not be available on acceptable terms, if at all.**

We believe that the net proceeds from this offering, together with our current cash, cash equivalents and short-term investments, will be sufficient to meet our projected capital requirements for at least the next 12 months. Our capital requirements will depend on many factors, including:

- the revenues generated by sales of our products;
- the costs associated with expanding our manufacturing and marketing activities, as well as sales and distribution efforts;
- the rate of progress and cost of our research and development activities;
- the costs of obtaining and maintaining FDA and other regulatory clearances and approvals of, and intellectual property protection for, our products and products in development;
- the effects of competing technological and market developments; and
- the number and timing of acquisitions and other strategic transactions.

As a result of these factors, we may need to raise additional funds, and we cannot be certain that such funds will be available to us on acceptable terms, if at all. Furthermore, if we issue equity securities to raise additional funds, our existing shareholders may experience dilution, and if we issue equity or debt securities, such securities may have rights, preferences and privileges senior to those of our existing shareholders. In addition, if we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our future products or proprietary technologies, or grant licenses on terms that are not favorable to us. If we cannot raise funds on acceptable terms, we may not be able to expand our operations, develop new products, take advantage of future opportunities or respond to competitive pressures or unanticipated customer requirements.

**If we are unable to manage the anticipated growth of our business, our future revenue and operating results may be adversely affected and our growth could be limited.**

The growth that we have experienced and that we may experience in the future, requires us to rapidly expand our sales personnel and manufacturing operations. Our United States sales and training force increased

from 10 employees on January 1, 2003 to 31 employees as of May 31, 2005, and we expect to continue to grow. Upon the closing of this offering, we intend to purchase Enable, the manufacturer of our Isolator handpieces. As of May 31, 2005, we had 71 full-time employees and, after our acquisition of Enable, we will have a total of 122 employees. Rapid expansion in personnel could result in unanticipated costs and disruptions to our operations. Organizational growth could strain our existing managerial, operational, financial and other resources. We will need to expand our current, or implement new, financial and operating systems, which may be costly and time-consuming.

For us to maintain and expand our business successfully, we must manufacture commercial quantities of our system's components, as well as components for other existing and future products, in compliance with regulatory requirements, including the FDA's Quality System Regulation, or QSR, at an acceptable cost and on a timely basis. Our anticipated growth may strain our ability to manufacture an increasingly large variety and supply of our products. Manufacturing facilities often experience difficulties in scaling up production, including problems with production yields and quality control and assurance. If we cannot scale and manage our business or our manufacturing operations appropriately, maintain control over expenses or otherwise adapt to future growth, our growth may be impaired and our future revenue and operating results will suffer.

**We depend upon single and limited source third-party suppliers, making us vulnerable to supply problems and price fluctuations, which could harm our business.**

We currently rely on single and limited source third-party vendors for the manufacture of many of the components used in the AtriCure bipolar ablation system. For example, we rely on one vendor to manufacture our ablation sensing unit, or ASU and we have not been able to identify any alternate supplier to manufacture our ASU, or our Isolator handpieces if we become unable to do so. In addition, in some cases there are relatively few, or no, alternative sources of supply for certain other components that are critical to the AtriCure bipolar ablation system. We also distribute a cryothermy, or extreme cold, ablation device that doctors have used to make specialized lesions in the heart for the treatment of AF in addition to the lesions made by the AtriCure bipolar ablation system, and our inability to offer this device to potential users of our system could negatively affect sales of our system.

Our reliance on these outside manufacturers and suppliers also subjects us to risks that could harm our business, including:

- we may not be able to obtain adequate supply in a timely manner or on commercially reasonable terms;
- we may have difficulty locating and qualifying alternative suppliers;
- switching components may require product redesign and new submissions to the FDA which could significantly delay production or, if the FDA refuses to approve the changes, completely eliminate our ability to manufacture or sell our system;
- our suppliers manufacture products for a range of customers, and fluctuations in demand for the products those suppliers manufacture for others may affect their ability to deliver components to us in a timely manner; and
- our suppliers may encounter financial hardships unrelated to our demand for components, which could inhibit their ability to fulfill our orders and meet our requirements.

Identifying and qualifying additional or replacement suppliers for any of the components used in the AtriCure bipolar ablation system, if required, may not be accomplished quickly or at all and could involve significant additional costs. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive products, and could therefore have a material adverse effect on our business, financial condition and results of operations.

**An inability to forecast future revenues or estimated life cycles of products may result in inventory-related charges that would negatively affect our gross margins and results of operations.**

To mitigate the risk of supply interruptions, we may determine to maintain excess inventory of the products or components supplied to us by third parties. Managing our inventory levels is important to our cash position and results of operations. As we expand, managing our inventory levels becomes more difficult. An excessive amount of inventory reduces our cash available for operations and may result in excess or obsolete materials. Inadequate inventory levels may make it difficult for us to meet customer product demand, resulting in decreased revenues. An inability to forecast future revenues or estimated life cycles of products may result in inventory-related charges that would negatively affect our gross margins and results of operations.

**If we or our third party vendors fail to comply with extensive FDA regulations relating to the manufacturing of our product or any component part, we may be subject to fines, injunctions and penalties, and our ability to commercially distribute and sell our products may be hurt.**

Our manufacturing facility and the manufacturing facility of any of our third-party component manufacturers, critical suppliers or third-party sterilization facility are required to comply with the FDA's quality systems regulations, or QSR, which sets forth minimum standards for the procedures, execution and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of our systems. The FDA may enforce its QSR, among other ways, through periodic unannounced inspections. If our manufacturing facility or the manufacturing facility of any of our third-party component manufacturers, critical suppliers or third-party sterilization facility, fails a QSR inspection. our and their operations could be disrupted, and manufacturing interrupted. Failure to take adequate and timely corrective action in response to an adverse QSR inspection could force a shutdown of our manufacturing operations or a recall of our products. Adverse QSR inspections could delay FDA approval of our system and could have an adverse effect on our production, sales and profitability. We and any of our third party vendors may also encounter other problems during manufacturing including failure to follow specific protocols and procedures, equipment malfunction and environmental factors, any of which could delay or impede our ability to meet demand. The manufacture of our product also subjects us to risks that could harm our business, including problems relating to the sterilization of our products or facilities and errors in manufacturing components that could negatively affect the efficacy or safety of our products or cause delays in shipment of our products. Any interruption or delay in the manufacturer of the product or any of its components could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive products, and could therefore have a material adverse effect on our business, financial condition and results of operations.

**If we fail to comply with the extensive FDA regulations relating to our business, we may be subject to fines, injunctions and penalties and our ability to commercially distribute and promote our products may be hurt.**

Our products are classified by the FDA as medical devices and as such are subject to extensive regulation in the United States by the FDA and numerous other federal, state and foreign governmental authorities. FDA regulations, guidance, notices and other issuances specific to medical devices are broad and regulate, among other things:

- product design, development, manufacturing and labeling;
- product testing, including electrical testing, transportation testing and sterility testing;
- pre-clinical laboratory and animal testing;
- clinical trials in humans;
- product safety, effectiveness and quality;
- product manufacturing, storage and distribution;
- premarket clearance or approval;

- record keeping and document retention procedures;
- product advertising, sales and promotion;
- post-market surveillance and medical device reporting, including reporting of deaths, serious injuries or other adverse events or device malfunctions;
- product corrective actions, removals and recalls; and
- import and export.

Compliance with FDA, state and other regulations can be complex, expensive and time-consuming. The FDA and state authorities have broad enforcement powers. Furthermore, changes in the applicable governmental regulations could prevent further commercialization of our products and technologies and could materially harm our business.

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

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

If any of these events were to occur, we could lose customers, and our production, product sales, business, results of operations and financial condition would be harmed.

We are also subject to medical device reporting regulations that require us to file reports with the FDA if our products reasonably are the cause of or contribute to an adverse event, death, serious injury or in the event of product malfunction. As of May 31, 2005, we have submitted a total of eight medical device reports to the FDA involving the AtriCure bipolar ablation system. The number of medical device reports we make, or the magnitude of the problems reported, could cause the FDA or us to terminate or modify our clinical trials or recall or cease the sale of our products, and could hurt commercial acceptance of our product in the market.

**Modifications to the AtriCure bipolar ablation system may require new clearances or approvals or require us to cease promoting or recall the modified products until such clearance or approvals are obtained.**

Any modification to a 510(k)-cleared device that would constitute a change in its intended use, design or manufacture, could require a new 510(k) clearance or, possibly, submission and FDA approval of a PMA. The FDA requires every medical device company to make the determination as to whether a new 510(k) is to be filed in the first instance, but the FDA may review any medical device company’s decision. We have previously made modifications to the AtriCure bipolar ablation system but do not believe such modifications require us to submit an additional 510(k) clearance. The FDA may not agree with our decisions regarding whether new clearances or approvals are required. If the FDA disagrees with us and requires us to submit a new 510(k) or PMA for then-existing modifications, we may be required to cease promoting or to recall the modified product until we obtain clearance or approval. In addition, we could be subject to significant regulatory fines or penalties. Furthermore, our products could be subject to recall if the FDA determines, for any reason, that our products are not safe or effective or that appropriate regulatory submissions were not made. Delays in receipt or failure to receive clearances or approvals, the loss of previously received clearances or approvals, or the failure to comply with existing or future regulatory requirements, could reduce our sales, profitability and future growth prospects.

**We will spend considerable time and money complying with federal, state and foreign regulations in addition to FDA regulations, and, if we are unable to fully comply with such regulations, we could face substantial penalties.**

We are subject to extensive regulation by the federal government and the states and foreign countries in which we conduct our business. The laws that affect our ability to operate our business in addition to the Federal Food, Drug, and Cosmetic Act and FDA regulations include, but are not limited to, the following:

- state food and drug laws, including laws regulating the manufacture, promotion and distribution of medical devices;
- state consumer protection, fraud and business practice laws;
- the federal Anti-Kickback Statute, which prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual, or furnishing or arranging for a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid Programs;
- the federal False Claims Act, which prohibits submitting a false claim or causing of the submission of a false claim to the government;
- Medicare laws and regulations that prescribe the requirements for coverage and payment, including the amount of such payment, and laws prohibiting false claims for reimbursement under Medicare and Medicaid;
- the federal doctor self-referral prohibition, commonly known as the Stark Law, which, in the absence of a statutory or regulatory exception, prohibits the referral of Medicare patients by a doctor to an entity for the provision of certain designated healthcare services including inpatient and outpatient hospital services, if the doctor or a member of the doctor's immediate family has a direct or indirect financial relationship, including an ownership interest in, or a compensation arrangement with, the entity and also prohibits that entity from submitting a bill to a federal payor for services rendered pursuant to a prohibited referral;
- state laws that prohibit the practice of medicine by non-doctors and by doctors not licensed in a particular state, and fee-splitting arrangements between doctors and non-doctors, as well as state law equivalents to the Anti-Kickback Statute and the Stark Law, which may not be limited to government- reimbursed items;
- Federal and State healthcare fraud and abuse laws or laws protecting the privacy of patient medical information, including the Health Insurance Portability and Accountability Act, or HIPAA; and
- the Federal Trade Commission Act and similar laws regulating advertising and consumer protection.

Certain federal and state laws regarding Medicare, Medicaid and physician self-referrals are broad and we may be required to change one or more of our practices to be in compliance with these laws. Healthcare fraud and abuse regulations are complex and even minor, inadvertent irregularities in submissions can potentially give rise to claims that a statute has been violated. Any violations of these laws could result in a material adverse effect on our business, financial condition and results of operations. For example, if we were found to be in violation of the federal False Claims Act, we would likely face significant fines and penalties and would likely be required to change substantially our sales, promotion, grant and educational activities. There is also a possibility that we could face an injunction that would prohibit in whole or in part our current business activities, and, as a result of enforcement actions against us or our senior officers, we could be excluded from participation in government healthcare programs such as Medicare and Medicaid. If there is a change in law, regulation or administrative or judicial interpretations, we may have to change our business practices or our existing business practices could be challenged as unlawful, which could have a material adverse effect on our business, financial condition and results of operations.

If our past or present operations are found to be in violation of any of the laws described above or the other governmental regulations to which we or our customers are subject, we may be subject to the applicable penalty associated with the violation, including civil and criminal penalties, damages, fines, exclusion from the Medicare and Medicaid and other government programs and the curtailment or restructuring of our operations. If we are required to obtain permits or licensure under these laws that we do not already possess, we may become subject to substantial additional regulation or incur significant expense. Any penalties, damages, fines, curtailment or restructuring of our operations would adversely affect our ability to operate our business and our financial results. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully or clearly interpreted by the regulatory authorities or the courts, and their provisions are subject to a variety of interpretations and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation.

**If doctors or hospitals were to receive inadequate levels of reimbursement for surgical AF treatments using the AtriCure bipolar ablation system from governmental or other third-party payors, it could affect the adoption or use of our system and may cause our revenues to decline.**

Widespread adoption or use of the AtriCure bipolar ablation system by the medical community is unlikely to occur if doctors and hospitals do not receive sufficient reimbursement from payors for surgical treatment of AF using our system. Currently, hospitals do not receive any additional reimbursement from the fee-for-service Medicare program, which is administered by the Centers for Medicare and Medicaid Services, or CMS, for the cost of AF treatment, or for the cost of our system, as part of an open-heart procedure. However, doctors performing AF treatment during an open-heart surgical procedures do receive separate reimbursement for performing these AF treatments. Sole-therapy minimally invasive AF treatment does qualify for reimbursement from the fee-for-service Medicare program allowing both doctors and hospitals to receive reimbursement for this type of AF treatment. In addition, the Medicare program has already adopted specific hospital inpatient treatment codes describing AF treatment by ablation in sole-therapy minimally invasive procedures such as that provided through the use of the AtriCure bipolar ablation system.

Many private payors look to CMS as a guideline in setting their reimbursement policies and amounts. If CMS or other agencies decrease or limit reimbursement payments for doctors and hospitals, this may affect coverage and reimbursement determinations by many private payors. Additionally, some private payors do not follow the Medicare guidelines and those payors may reimburse only a portion of the cost of AF treatment or not at all. Furthermore, for some governmental payors, such as the Medicaid program, reimbursement differs from state to state, and some state Medicaid programs may not reimburse for our procedure in an adequate amount, if at all.

We are unable to predict all changes to the coverage or reimbursement methodologies that will be employed by private or governmental third-party payors. We cannot be certain that under prospective payment systems and applicable fee schedules, such as those used by CMS and by many private healthcare payors, the cost of the procedures utilizing the AtriCure bipolar ablation system will be adequately reimbursed or that it will receive reimbursement consistent with historical levels. Any denial of private or governmental third-party payor coverage or inadequate reimbursement for procedures performed using the AtriCure bipolar ablation system could harm our business and reduce our revenues.

**Adverse changes in payors' policies toward coverage and reimbursement for surgical AF treatment would harm our ability to promote and sell the AtriCure bipolar ablation system**

Third-party payors are increasingly exerting pressure on medical device companies to reduce their prices. Even to the extent that the treatment of AF using the AtriCure bipolar ablation system is reimbursed by private payors and governmental payors, adverse changes in payors' policies toward coverage and reimbursement for surgical AF treatment would also harm our ability to promote and sell the AtriCure bipolar ablation system.

Payors continue to review their policies and can, without notice, deny coverage for treatments that include the use of our product. Because each third-party payor individually approves coverage and reimbursement, obtaining these approvals may be time-consuming and costly. In addition, third-party payors may require us to provide scientific and clinical support for the use of the AtriCure bipolar ablation system. Alternatively, government or private payors may deem the treatment of AF utilizing the AtriCure bipolar ablation system experimental or not medically necessary and, as such, not provide coverage.

Adverse changes in coverage and reimbursement for surgical AF treatment could harm our business and reduce our revenues.

**We have limited long-term clinical data regarding the safety and efficacy of the AtriCure bipolar ablation system. Any long-term data that is generated may not be positive or consistent with our limited short-term data, which would affect the rate at which our system is adopted by the medical community.**

Our success depends upon our system's acceptance by the medical community as safe and effective in the treatment of AF. Serious complications, including death, have been encountered in connection with the surgical treatment of AF, including in connection with a limited number of sole-therapy minimally invasive procedures in which our system was used. Important factors upon which the efficacy of our system will be measured include long-term data on the number of patients that continue to experience AF following treatment with our system and the number of patients that have serious complications resulting from AF treatment using our system. Our clinical trials may produce limited data regarding the efficacy of our system for the treatment of AF, or may identify unexpected safety issues. We cannot provide any assurance that the data collected during our clinical trials will be compelling to the medical community or to the FDA, because it may not be scientifically meaningful and may not demonstrate that the AtriCure bipolar ablation system is an attractive procedure when compared against data from alternative procedures and products. In addition, the long-term effects of the AtriCure bipolar ablation system procedure are not known.

The results of short-term clinical experience of the AtriCure bipolar ablation system do not necessarily predict long-term clinical benefit. If the long-term clinical trial results are not as positive as the short-term results or the long-term results do not otherwise meet doctors' expectations, the FDA may not approve our system for the treatment of AF, the AtriCure bipolar ablation system may not become widely adopted, and doctors may recommend alternative treatments for their patients. Another significant factor is acute safety data on complications that occur during the treatment of AF during open-heart surgical procedures and as a sole-therapy minimally invasive treatment. Serious complications, including death, have been encountered in connection with the surgical treatment of AF, including in connection with a limited number of sole-therapy minimally invasive procedures in which our system was used.

If the results obtained from our RESTORE-SR trial or any other clinical studies or clinical or commercial experience indicate that the AtriCure bipolar ablation system is not safe or effective, or not as safe or effective as other treatment options or than current short-term data would suggest, the FDA may not approve our system for the treatment of AF, adoption of the use of our system for the treatment of AF may suffer and our business would be harmed.

Even if we believe the data collected from clinical studies or clinical experience indicates positive results, each doctor's actual experience with our system may vary. Clinical studies conducted with our system have involved procedures performed by doctors who are technically proficient. Consequently, both short- and long-term results reported in these studies may be significantly more favorable than typical results of practicing doctors, which could negatively impact rates of adoption of the AtriCure bipolar ablation system.

**We sell the AtriCure bipolar ablation system outside of the United States and are subject to various risks relating to international operations, which could harm our international revenues and profitability.**

During the year ended December 31, 2004, approximately 7.4% of our total revenues were attributable to sales in markets outside of the United States. We currently depend on third-party distributors to sell the AtriCure

bipolar ablation system outside of the United States, and if these distributors underperform, we may be unable to increase or maintain our level of international revenue. Over the long term, we intend to grow our business outside of the United States, and to do so we will need to attract additional distributors or hire direct sales personnel to expand the territories in which we sell the AtriCure bipolar ablation system. Distributors may not commit the necessary resources to promote and sell our system to the level of our expectations. If current or future distributors do not perform adequately, or we are unable to locate distributors in particular geographic areas, we may not realize expected long-term international revenue growth.

Doing business outside of the United States exposes us to risks distinct from those we face in our domestic operations. For example, our operations outside of the United States are subject to different regulatory laws and requirements in each jurisdiction where we operate or have sales. Our failure to comply with current or future foreign regulatory requirements, or the assertion by foreign authorities that we have failed to comply, could result in adverse consequences, including enforcement actions, fines and penalties, recalls, cessation of sales, civil and criminal prosecution, and the consequences could be disproportionate to the relative contribution of our international operations to our results of operations. Moreover, if political or economic conditions deteriorate in these countries, our ability to conduct our international operations could be limited and the costs could be increased, which could negatively affect our operating results.

Engaging in business outside of the United States inherently involves a number of other difficulties and risks, including:

- export restrictions and controls relating to technology;
- pricing pressure that we may experience internationally;
- difficulties in enforcing agreements and collecting receivables through certain foreign legal systems;
- political and economic instability;
- potentially adverse tax consequences, tariffs and other trade barriers;
- the need to hire additional personnel to promote our system outside of the United States;
- international terrorism and anti-American sentiment;
- fluctuations in exchange rates for future sales denominated in non-United States currency; and
- difficulties in obtaining and enforcing intellectual property rights.

Our exposure to each of these risks may increase our costs and require significant management attention. We cannot assure you that one or more of these factors will not harm our business.

**If coverage and adequate levels of reimbursement from governmental and third-party payors outside of the United States are not attained and maintained, sales of the AtriCure bipolar ablation system outside of the United States may decrease and we may fail to achieve or maintain significant sales outside of the United States.**

Our revenues generated from sales outside of the United States are also dependent upon the availability of coverage and reimbursement within prevailing foreign healthcare payment systems. In general, foreign healthcare payors do not provide reimbursement for sole-therapy minimally invasive procedures utilizing an ablation device such as the AtriCure bipolar ablation system. In addition, healthcare cost containment efforts similar to those we face in the United States are prevalent in many of the other countries in which we sell our system, and these efforts are expected to continue. To the extent that use of an ablation device such as the AtriCure bipolar ablation system has historically received reimbursement under a foreign healthcare payment system, if any, such reimbursement has typically been significantly less than the reimbursement provided in the United States. If coverage and adequate levels of reimbursement from governmental and third-party payors

outside of the United States are not attained and maintained, sales of the AtriCure bipolar ablation system outside of the United States may decrease and we may fail to achieve or maintain significant sales outside of the United States.

**If we choose to acquire new and complementary businesses, products or technologies, we may be unable to complete these acquisitions or to successfully integrate them in a cost-effective and non-disruptive manner.**

Our success depends on our ability to continually enhance and broaden our product offerings in response to changing customer demands, competitive pressures and technologies. Accordingly, we may in the future pursue the acquisition of, or joint ventures relating to, complementary businesses, products or technologies instead of developing them ourselves. Other than the merger agreement with Enable, which contemplates our acquisition of Enable contemporaneously with the closing of this offering, we have no current commitments with respect to any acquisition or investment. We do not know if we will be able to successfully complete any acquisitions or joint ventures, including the Enable acquisition or future acquisitions or joint ventures, or whether we will be able to successfully integrate any acquired business, product or technology or retain any key employees. Integrating any business, product or technology we acquire could be expensive and time consuming, disrupt our ongoing business and distract our management. If we are unable to integrate any acquired businesses, products or technologies effectively, our business will suffer. In addition, any amortization or charges resulting from the costs of acquisitions could increase our expenses.

**We depend on our officers and other skilled and experienced personnel to operate our business effectively. If we are not able to retain our current employees or recruit additional qualified personnel, our business will suffer and our future revenue and profitability will be impaired.**

We are highly dependent on the skills and experience of our President and Chief Executive Officer, David J. Drachman and our Chief Technology Officer, Michael D. Hooven, and other employees. We do not have any insurance in the event of the death or disability of our key personnel other than Mr. Drachman and Mr. Hooven. We do not currently have any employment agreements with any of our officers and they may terminate their employment and work elsewhere without notice and without cause or good reason. Currently we have non-compete agreements with our officers and other employees. Due to the specialized knowledge that each of our officers possesses with respect to the AtriCure bipolar ablation system and our operations and the limited pool of people with relevant experience in the medical device field, the loss of service of one or more of these individuals could significantly affect our ability to operate and manage our business. In particular, the departure of our Chief Technology Officer may impair our ability to develop new, advanced technologies. The announcement of the loss of one or more of our key personnel could negatively affect our stock price.

We depend on our scientific and technical personnel for successful product development and innovation, which are critical to the success of our business. In addition, to succeed in the implementation of our business strategy, our management team must rapidly execute our sales strategy, obtain expanded FDA clearances and approvals, achieve market acceptance for the AtriCure bipolar ablation system and further develop products, while managing anticipated growth by implementing effective planning, manufacturing and operating processes. Managing this growth will require us to attract and retain additional management and technical personnel. Our offices are located in West Chester, Ohio where it is difficult to attract and retain employees with experience in the medical device industry. We rely on direct sales employees and manufacturer’s representatives to sell the AtriCure bipolar ablation system in the United States. We plan to expand our sales team and failure to adequately train our employees in the use and benefits of our products will prevent us from achieving our market share and revenue growth goals. In addition, we have key relationships with doctors that involve procedure and tool development, market development and clinical development. If any of these doctors end their relationship with us, our business would be negatively impacted. We cannot assure you that we will be able to attract and retain the personnel and doctor relationships necessary to grow and expand our business and operations. If we fail to identify, attract, retain and motivate these highly skilled personnel and doctors, we may be unable to continue our development and sales activities.

**Compliance with environmental laws and regulations may be expensive. Failure to comply with environmental laws and regulations could subject us to significant liability.**

Our manufacturing operations and research and development activities involve the use of biological materials and hazardous substances and are subject to a variety of federal, state and local environmental laws and regulations relating to the storage, use, discharge, disposal, remediation of, and human exposure to, hazardous substances. Our research and development and manufacturing operations may produce biological waste materials, such as animal tissues, and certain chemical waste. These operations are permitted by regulatory authorities, and the resultant waste materials are disposed of in material compliance with environmental laws and regulations. Compliance with these laws and regulations may be expensive and non-compliance could result in substantial liabilities. In addition, we cannot completely eliminate the risk of accidental contamination or injury to third parties from the use, storage, handling or disposal of these materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could exceed any applicable insurance coverage we may have. In addition, our manufacturing operations may result in the release, discharge, emission or disposal of hazardous substances that could cause us to incur substantial liabilities, including costs for investigation and remediation.

**Risks Relating to This Offering**

**The price and trading volume of our common stock may experience extreme fluctuations and you could lose some or all of your investment.**

Because we operate within the medical device segment of the healthcare industry, our stock price is likely to be volatile. The market price of our common stock may fluctuate substantially due to a variety of factors, including:

- doctor and patient acceptance of the surgical treatment of AF using our system;
- adverse regulatory developments with respect to our products, such as recalls, new regulatory requirements, changes in regulatory requirements or guidance and timing of regulatory clearances and approvals for new products;
- coverage and reimbursement determinations for our products and the related procedures;
- the timing of orders received; delays or interruptions in manufacturing or shipping of our products;
- pricing of our products;
- media reports and publications and announcements about products or new innovations that could compete with our products or about the medical device product segment in general;
- market conditions or trends related to the medical device and healthcare industries or the market in general;
- additions to or departures of our key personnel;
- disputes, litigation or other developments relating to proprietary rights, including patents, and our ability to obtain patent protection for our technologies;
- changes in financial estimates, investors' perceptions or recommendations by securities analysts;
- variations in our quarterly financial and operating results; and
- changes in accounting principles.

These factors, some of which are not within our control, may cause the price of our stock to fluctuate substantially. If our quarterly operating results fail to meet or exceed the expectations of securities analysts or investors, our stock price could drop suddenly and significantly. We believe the quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

The market prices of the securities of medical device companies, particularly companies like ours without consistent product revenues and earnings, have been highly volatile and are likely to remain highly volatile in the future. This volatility has often been unrelated to the operating performance of particular companies. These market prices generally are not sustainable and are highly volatile. In the past, companies that experience volatility in the market price of their securities have often faced securities class action litigation. Whether or not meritorious, litigation brought against us could result in substantial costs, divert our management's attention and resources and harm our ability to grow our business.

**If an active, liquid trading market for our common stock does not develop, you may be unable to sell your shares quickly or at the initial public offering price.**

Prior to this offering, there was no public market for our common stock. An active trading market for our common stock may not develop following this offering. You may not be able to sell your shares quickly or at the initial public offering price if trading in our stock is not active. The initial public offering price may not be indicative of prices that will prevail in the trading market. See "Underwriting" for more information regarding the factors considered in determining the initial public offering price.

**The future sale of our common stock could dilute your investment and negatively affect our stock price.**

After this offering, we will have approximately million shares of common stock outstanding, or million shares if the underwriters exercise their over-allotment option in full. The shares sold in this offering, or shares if the underwriters exercise their over-allotment option in full, will be freely tradable without restriction under the federal securities laws unless purchased by our affiliates. The remaining shares of common stock outstanding after this offering will be available for public sale subject in some cases to volume and other limitations. See "Shares Eligible for Future Sale." Substantially all of our shares outstanding after this offering (excluding the shares sold in this offering) will be subject to the lock-up agreements with the underwriters described under "Underwriting."

If our common shareholders sell substantial amounts of common stock in the public market, or the market perceives that such sales may occur, the market price of our common stock could fall. After this offering, the holders of approximately shares of our common stock, the holders of options to purchase shares of our common stock and the holders of warrants to purchase shares of our common stock will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other shareholders. Furthermore, if we were to include in a company-initiated registration statement shares held by those holders pursuant to the exercise of their registration rights, the sale of those shares could impair our ability to raise needed capital by depressing the price at which we could sell our common stock.

In addition, we may need to raise additional capital in the future to fund our operations. If we raise additional funds by issuing equity securities, our stock price may decline and our existing shareholders may experience significant dilution. Furthermore, we may enter into financing transactions at prices that represent a substantial discount to market price. A negative reaction by investors and securities analysts to any sale of our equity securities could result in a decline in the trading price of our common stock.

**You will suffer immediate and substantial dilution.**

We expect the initial public offering price of our shares to be substantially higher than the book value per share of our outstanding common stock. Accordingly, investors purchasing shares of common stock in this offering will:

- pay a price per share that substantially exceeds the value of our tangible assets after subtracting liabilities; and
- contribute approximately % of the total amount invested to date to fund us but own only approximately % of the shares of common stock outstanding after this offering.

To the extent outstanding stock options, warrants or the underwriters' over-allotment option are exercised after this offering, there will be further dilution to new investors. See "Dilution."

**If our principal shareholders, executive officers and directors choose to act together, they may be able to control our management and operations, which may prevent us from taking actions that may be favorable to you.**

Our executive officers, directors and principal shareholders, and entities affiliated with them, will beneficially own in the aggregate approximately % of our common stock following this offering. This significant concentration of share ownership may adversely affect the trading price of our common stock because investors often perceive disadvantages in owning stock in companies with controlling shareholders. These shareholders, acting together, will have the ability to exert substantial influence over all matters requiring approval by our shareholders, including the election and removal of directors and any proposed merger, consolidation or sale of all or substantially all of our assets. In addition, they could dictate the management of our business and affairs. This concentration of ownership could have the effect of delaying, deferring or preventing a change in control of us or impeding a merger or consolidation, takeover or other business combination that could be favorable to you.

**Anti-takeover provisions in our amended and restated certificate of incorporation and amended and restated bylaws and under Delaware law could inhibit a change in control or a change in management that you consider favorable.**

Provisions in our certificate of incorporation and bylaws could delay or prevent a change of control or change in management that would provide you with a premium to the market price of your common stock. These provisions include those:

- authorizing the issuance without further approval of "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- prohibiting cumulative voting in the election of directors, which would otherwise allow less than a majority of shareholders to elect director candidates;
- limiting the ability to remove directors;
- limiting the ability of shareholders to call special meetings of shareholders;
- prohibiting shareholder action by written consent, thereby requiring all shareholder actions to be taken at a meeting of shareholders; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by shareholders at shareholder meetings.

In addition, Section 203 of the Delaware General Corporation Law limits business combination transactions with 15% shareholders that have not been approved by our board of directors. These provisions and others could make it difficult for a third party to acquire us, or for members of our board of directors to be replaced, even if doing so would be beneficial to our shareholders. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt to replace the current management team. If a change of control or change in management is delayed or prevented, you may lose an opportunity to realize a premium on your shares of common stock or the market price of our common stock could decline.

**We do not expect to pay dividends in the foreseeable future. As a result, you must rely on stock appreciation for any return on your investment.**

We do not anticipate paying cash dividends on our common stock in the foreseeable future. Any payment of cash dividends will also depend on our financial condition, results of operations, capital requirements and other

factors and will be at the discretion of our board of directors. Accordingly, you will have to rely on capital appreciation, if any, to earn a return on your investment in our common stock. Furthermore, we may in the future become subject to contractual restrictions on, or prohibitions against, the payment of dividends.

**We expect to use more than 10% of the net proceeds from this offering to acquire Enable, a related party, which acquisition could involve terms that are less favorable than an acquisition of an unrelated party.**

We intend to use $6.0 million of the net proceeds of this offering, or $6.5 million if the closing occurs after July 1, 2005, to acquire Enable contemporaneously with the closing of this offering pursuant to an executed merger agreement. Enable is the manufacturer of our Isolator handpieces, which are an essential part of our system, the sales to us of which constitute substantially all of the current revenues of Enable. Three of the members of our board of directors, directly or indirectly, hold an aggregate of approximately 63% of the outstanding common stock of Enable and, accordingly, will receive a majority of the amounts that we pay to acquire Enable. None of these persons individually holds a majority of the outstanding common stock of Enable nor are we aware that these persons are acting collectively as a group. One of these three directors, Michael Hooven, our Chief Technology Officer, is also a director, an officer and a shareholder of Enable. The purchase price for Enable was determined by negotiations between special committees of disinterested directors of Enable and us, but no opinion as to the fairness of the terms was obtained from an investment banking firm. We cannot assure you that negotiations with an unrelated party would not have resulted in more favorable terms to us.

**We have reserved discretion in how we allocate our use of the net proceeds we receive from this offering and if we do not use these proceeds effectively, we may fail to achieve our objectives and our stock price could decline.**

We will have flexibility in applying the net proceeds we receive from this offering among the categories of identified uses described in the “Use of proceeds” section of this prospectus. Although we expect to use the net proceeds in the approximate allocations described elsewhere in this prospectus, if we use the net proceeds for corporate purposes that do not yield a significant return or any return at all for our shareholders, our stock price could decline, and you may also not agree with how we allocate the net proceeds we receive from this offering.

**The requirements of being a public company may strain our resources and distract management.**

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act. These requirements may place a strain on our systems and resources. The Exchange Act requires that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires that we maintain effective disclosure controls and procedures and internal controls for financial reporting. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, significant resources and management oversight will be required. This may divert management’s attention from other business concerns, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge, and we cannot assure you that we will be able to do so in a timely fashion.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled “Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” contains forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. All statements contained in this prospectus other than statements of historical fact are forward-looking statements. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words “may,” “continue,” “estimate,” “intend,” “plan,” “will,” “believe,” “project,” “expect,” “anticipate” and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements include, among other things, statements about:

- the rate and degree of market acceptance of our products;
- our ability to develop and market new and enhanced products;
- the timing of and our ability to obtain and maintain regulatory clearances and approvals for our products;
- our competitors;
- our intellectual property portfolio and licensing strategy;
- our estimates regarding future revenues, expenses and capital requirements and needs for additional financing;
- our marketing and manufacturing capacity and strategy;
- the unpredictability of our quarterly revenues and results of operations; and
- the timing of and ability to obtain reimbursement for procedures utilizing our products.

Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in “Risk Factors.” In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements.

These forward-looking statements speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, review the factors and risks we describe in the reports we will file from time to time with the SEC after the date of this prospectus. See “Where You Can Find More Information.”

## USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of the shares of common stock we are offering will be approximately $ million, assuming an initial public offering price of $ per share, after deducting underwriting discounts and commissions and the estimated offering expenses payable by us. If the underwriters exercise their over-allotment option in full, we estimate the net proceeds to us from this offering will be approximately $ million. We will not receive any proceeds from any sale of common stock by the selling shareholders.

We intend to use $6.0 million of the net proceeds of this offering, or $6.5 million if the closing occurs after July 1, 2005, to acquire Enable contemporaneously with the closing of this offering pursuant to an executed merger agreement. Enable is the manufacturer of our Isolator handpieces, which are an essential part of our system, the sales to us of which constitute substantially all of the current revenues of Enable. Three of the members of our board of directors, directly or indirectly, hold an aggregate of approximately 63% of the outstanding common stock of Enable and, accordingly, will receive a majority of the amounts that we pay to acquire Enable. None of these persons individually holds a majority of the outstanding common stock of Enable nor are we aware that these persons are acting collectively as a group. One of these three directors, Michael Hooven, our Chief Technology Officer, is also a director, an officer and a shareholder of Enable. See “Risk Factors—Risks Relating to this Offering—We expect to use more than 10% of the net proceeds from this offering to acquire Enable, a related party, which acquisition could involve terms that are less favorable than an acquisition of an unrelated party” and “Business—Acquisition of Enable Medical Corporation.”

We intend to use the remaining proceeds from this offering for working capital and other general corporate purposes, including repayment of any amounts outstanding under our credit facility. We entered into a $5.0 million credit facility on March 8, 2005 for working capital requirements. Any outstanding borrowings under the facility will bear interest at the prime rate plus 1.75% and our ability to draw down funds under this facility terminates upon the earlier of September 1, 2005 and the closing of this offering, and upon other specified events. Under the terms of the facility, we are required to pay only monthly installments of interest through August 2005 and monthly installments of principal and interest thereafter in addition to a fee due at maturity on September 1, 2009 equal to 15% of the aggregate amount borrowed under the credit facility, with prepayment in whole allowed at any time without penalty. There have been no borrowings pursuant to this facility as of May 31, 2005. We may use proceeds from this offering to repay any amounts borrowed under this credit facility plus interest and fees.

We may also use a portion of the net proceeds to acquire or invest in complementary businesses, products or technologies in addition to Enable. Although we have no specific plans with respect to other acquisitions, we evaluate acquisition opportunities and engage in related discussions from time to time. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds from this offering.

Pending use of the net proceeds from this offering, we intend to invest the net proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments.

## DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock and we do not currently anticipate declaring or paying cash dividends on our capital stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance operations. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants as well as other factors that our board of directors may deem relevant.

## CAPITALIZATION

The following table summarizes our capitalization as of March 31, 2005:

- on an actual basis;
- on a pro forma basis to give effect to:
  - the filing of an amended and restated certificate of incorporation to provide for an authorized capital stock of 10,000,000 shares of preferred stock and 90,000,000 shares of common stock, which will become effective immediately prior to closing of this offering;
  - the conversion, upon closing of this offering, of all of our outstanding shares of preferred stock into shares of our common stock;
  - the acquisition of Enable, which is anticipated to occur concurrently with the closing of this offering; and
  - the sale of the shares of our common stock we are offering at an assumed public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, and the application of net proceeds therefrom.

You should read the following table in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes and pro forma combined financial information and related notes appearing elsewhere in this prospectus.

| | As of March 31, 2005 (unaudited) | |
|---|---|---|
| | Actual | Pro Forma (unaudited) |
| | (in thousands, except share and per share data) | |
| Capital lease obligation | — | 9 |
| Redeemable preferred stock, $0.0001 par value per share; 23,720,515 shares authorized; 22,845,676 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma | 37,742 | — |
| Shareholders' equity (deficit): | | |
| Preferred stock, $0.001 par value per share; no shares authorized, issued or outstanding, actual; 10,000,000 shares authorized, no shares issued and outstanding, pro forma | — | — |
| Common stock, $0.001 par value per share; 90,000,000 shares authorized, shares issued and outstanding, pro forma | — | |
| Common stock, $0.0001 par value per share; 40,000,000 shares authorized, shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma | 1 | — |
| Additional paid-in capital | 3,337 | |
| Unearned compensation | (645) | (645) |
| Accumulated deficit | (32,009) | |
| Total shareholders' equity (deficit) | (29,316) | |
| Total capitalization | $ 8,426 | $ |

The table above excludes as of March 31, 2005:

- shares of our common stock issuable upon the exercise of outstanding options at a weighted average exercise price of $ per share;
- shares of our common stock issuable upon the exercise of outstanding warrants at a weighted average exercise price of $ per share; and
- shares of our common stock reserved for issuance upon the exercise of options available for future grant pursuant to our 2001 Stock Option Plan.

Between March 31, 2005 and May 31, 2005, options to purchase shares of our common stock at a weighted average exercise price of $ were granted, options to purchase shares of our common stock at exercise prices ranging from $ to $ were terminated and options to purchase shares of our common stock at an exercise price of $ were exercised. In addition, a warrant to purchase shares of our common stock at an exercise price of $ per share was granted in connection with our credit facility.

## DILUTION

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

Our net tangible book value (deficit) as of March 31, 2005 was approximately $(29.5) million, or $ per share of common stock. Net tangible book value (deficit) per share is equal to our total tangible assets minus total liabilities, all divided by the number of shares of common stock outstanding as of March 31, 2005.

Our pro forma net tangible book value per share as of March 31, 2005 was approximately $ per share. Pro forma net tangible book value per share gives effect to the conversion, upon closing of this offering, of all of our outstanding shares of preferred stock into shares of our common stock.

After giving effect to the sale of the shares of common stock we are offering at an assumed initial public offering price of $ per share, and after deducting underwriting discounts and commissions and our estimated offering expenses, our pro forma as adjusted net tangible book value as of March 31, 2005 would have been approximately $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value of $ per share and an immediate dilution of $ per share to new investors. The following table illustrates this calculation on a per share basis:

| | |
|---|---|
| Assumed initial public offering price per share | |
| Net tangible book value (deficit) per share as of March 31, 2005 | |
| Pro forma decrease in net tangible book value per share | |
| Pro forma net tangible book value per share of common stock as of March 31, 2005 | |
| Pro forma increase per share attributable to the offering | |
| Pro forma as adjusted net tangible book value per share after this offering | |
| Pro forma dilution per share to new investors | |

If the underwriters exercise their over-allotment option in full, our pro forma as adjusted book value will increase to $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors.

The following table summarizes, on a pro forma as adjusted basis as of March 31, 2005, after giving effect to this offering, and the pro forma adjustments and pro forma as adjusted adjustments referred to above, the total number of shares of our common stock purchased from us and the total consideration and average price per share by existing shareholders and by new investors:

| | Total shares | | Total consideration | | |
|---|---|---|---|---|---|
| | Number | Percent | Amount | Percent | Average price per share |
| Existing shareholders | | % | $ | % | $ |
| New investors | | | | | |
| Total | | 100.0% | $ | 100.0% | |

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

- the pro forma as adjusted percentage of shares of our common stock held by existing shareholders will decrease to approximately % of the total number of pro forma as adjusted shares of our common stock outstanding after this offering; and
- the pro forma as adjusted number of shares of our common stock held by new public investors will increase to , or approximately % of the total pro forma as adjusted number of shares of our common stock outstanding after this offering.

The tables and calculations above are based on shares of our common stock outstanding as of March 31, 2005 and exclude:

- shares of our common stock issuable upon the exercise of outstanding options at a weighted average exercise price of $ per share;
- shares of our common stock issuable upon the exercise of outstanding warrants at an exercise price of $ per share; and
- shares of our common stock reserved for issuance upon the exercise of options available for future grant pursuant to our 2001 Stock Option Plan.

Between March 31, 2005 and May 31, 2005, options to purchase shares of our common stock at an exercise price of $ were granted, options to purchase shares of our common stock at exercise prices ranging from $ to $ were terminated and options to purchase shares of our common stock at an exercise price of $ were exercised. In addition, a warrant to purchase shares of our common stock at an exercise price of $ per share was granted in connection with our credit facility.

If all of our outstanding options and warrants as of March 31, 2005 were exercised, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors.

## SELECTED FINANCIAL DATA

The following selected financial data as of and for the years ended December 31, 2001, 2002, 2003 and 2004 have been derived from our financial statements. The financial statements as of December 31, 2004 and 2003 and for the years ended December 31, 2004, 2003 and 2002 have been audited by Deloitte & Touche LLP, independent registered public accounting firm, and which financial statements and related notes and the report thereon we include elsewhere in this prospectus. The following selected financial data as of December 31, 2001 and 2002 and for the year ended December 31, 2001 have been derived from our audited financial statements not included in this prospectus. The selected financial data as of and for the three months ended March 31, 2004 and March 31, 2005 have been derived from our unaudited financial statements and, in our opinion, reflect all adjustments necessary to present fairly the data for those periods. Our operations began October 31, 2000 and we had no revenue and minimal start-up expenses for the period ending December 31, 2000. You should read the selected financial data in conjunction with our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this prospectus. The information set forth below is not indicative of our future results.

| | Year Ended December 31, | | | | Three Months Ended March 31, | |
|---|---|---|---|---|---|---|
| **Statement of Operations Data:** | **2001** | **2002** | **2003** | **2004** | **2004** | **2005** |
| | (In thousands, except share and per share data) | | | | | |
| Revenues: | | | | | | |
| Sales of products | $ 20 | $ 1,766 | $ 9,792 | $ 18,946 | $ 3,797 | $ 7,490 |
| Commissions | — | — | — | 211 | 5 | 8 |
| Total revenues | 20 | 1,766 | 9,792 | 19,157 | 3,802 | 7,498 |
| Cost of revenues | 8 | 681 | 2,612 | 5,202 | 1,090 | 1,920 |
| Gross profit | 12 | 1,085 | 7,180 | 13,955 | 2,712 | 5,578 |
| Gross profit percentage | 60.0% | 61.4% | 73.3% | 72.8% | 71.3% | 74.4% |
| Expenses: | | | | | | |
| Research and development expenses | 1,838 | 2,721 | 2,501 | 4,422 | 984 | 1,737 |
| Selling, general and administrative expenses(1) | 1,314 | 4,026 | 8,036 | 15,186 | 2,911 | 5,252 |
| Total expenses | 3,152 | 6,747 | 10,537 | 19,608 | 3,895 | 6,989 |
| Loss from operations | (3,140) | (5,662) | (3,357) | (5,653) | (1,183) | (1,411) |
| Preferred stock interest expense | 469 | 2,563 | 3,905 | 3,905 | 976 | 976 |
| Other interest income (expense)—net | 13 | (806) | 154 | 106 | 29 | 21 |
| Net loss available to common shareholders | $ (3,596) | $ (9,031) | $ (7,108) | $ (9,452) | $ (2,130) | $ (2,366) |
| Basic and diluted loss per share | $ (0.54) | $ (1.34) | $ (1.04) | $ (1.36) | $ (0.31) | $ (0.33) |
| Weighted average shares outstanding—basic and diluted | 6,709,396 | 6,753,652 | 6,807,992 | 6,948,116 | 6,862,200 | 7,149,858 |

*(1) Includes non-cash charge of $327.2, $73.7 and $58.2 relating to certain employee option grants for the year ended December 31, 2004 and for the three months ended March 31, 2004 and 2005, respectively.*

| | As of December 31, | | | | As of March 31, |
|---|---|---|---|---|---|
| **Balance Sheet Data:** | **2001** | **2002** | **2003** | **2004** | **2005** |
| | | | (in thousands) | | |
| Cash and cash equivalents | $ 1,890 | $15,434 | $ 10,399 | $ 5,175 | $ 2,452 |
| Working capital | 1,606 | 15,836 | 11,985 | 6,590 | 4,617 |
| Total assets | 2,051 | 17,596 | 14,759 | 12,731 | 12,408 |
| Redeemable preferred stock | 5,572 | 28,871 | 32,805 | 36,756 | 37,742 |
| Accumulated deficit | (3,474) | (9,967) | (20,135) | (29,633) | (32,009) |
| Total shareholders' equity (deficit) | (3,841) | 11,851 | (18,937) | (27,331) | (29,316) |

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

*The following discussion of our financial condition and results of operations should be read in conjunction with our historical financial statements and related notes and the pro forma combined financial statements and related notes appearing elsewhere in this prospectus. This discussion contains forward-looking statements that involve significant risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in these forward-looking statements. Also, see the information under "Risk Factors—Risks Relating to Our Business" for a discussion of the material risks and uncertainties applicable to our business.*

### Overview

We develop, manufacture and sell innovative surgical devices designed to create precise lesions, or scars, in soft tissues. Our primary product line is the AtriCure bipolar ablation system, which accounted for 100% of our revenues for 2002 and 2003, 99% of our revenues for 2004 and 98% of our revenues for the three months ended March 31, 2005. Medical journals have described the adoption by leading cardiothoracic surgeons of the AtriCure bipolar ablation system as a standard treatment alternative during open-heart surgical procedures to safely, rapidly and reliably create lesions in cardiac tissue to block the abnormal electrical impulses that cause AF. Cardiothoracic surgeons have used the AtriCure bipolar ablation system to treat AF in over 16,000 patients since its general commercial release in the United States in January 2003. Sales of our system reached approximately $19.0 million during 2004, the second full year of general sales of our system. We believe that our system is currently a market leader in the treatment of AF during open-heart surgical procedures, and our system is being evaluated in independent clinical studies by leading cardiothoracic surgeons for use as a sole-therapy minimally invasive treatment for AF. We anticipate that substantially all of our sales for the foreseeable future will relate to the AtriCure bipolar ablation system.

From our inception in November 2000 through the first half of 2002, our operations consisted primarily of development-stage activities, including the development of the AtriCure bipolar ablation system, raising capital, obtaining product clearances, conducting product testing and evaluations, and recruiting personnel. After limited sales of our system in 2002, we commenced the general commercial release of our system in January 2003, generating total revenues of approximately $1.8 million for 2002, $9.8 million for 2003 and $19.2 million for 2004. We had a net loss available to common shareholders (after accrual of interest on our redeemable preferred stock) of approximately $9.0 million for 2002, $7.1 million for 2003 and $9.5 million for 2004.

We currently sell the AtriCure bipolar ablation system to customers in the United States through our direct sales force and, to a lesser extent, through independent manufacturer's representatives. We also sell our system outside of the United States, primarily in Asia, Europe, South America and the Middle East, through distributors who pay us in United States currency. To date, our sales outside of the United States have been limited, constituting approximately 7.4% of our total revenues for 2004 and we expect international sales to remain limited for the foreseeable future. We have expanded our sales and training force in the United States from 10 employees as of January 1, 2003 to 31 employees as of May 31, 2005, and we expect to continue to grow our sales and training staff over time. Since the treatment of AF using our system is an elective surgical procedure, we believe that we will experience reduced revenues in the summer months, when fewer patients undergo this type of elective surgery.

Our future growth will depend on our ability to generate sales of the AtriCure bipolar ablation system through increasing acceptance by the medical community of our system as a standard treatment alternative for the surgical treatment of AF. Acceptance of our system is dependent upon, among other factors, awareness and education of the medical community about the surgical treatment of AF, in general, and the existence and effectiveness of the AtriCure bipolar ablation system, in particular.

In 2001, the FDA cleared the AtriCure bipolar ablation system for the ablation and coagulation of soft tissues during certain non-cardiac-related surgical procedures, but our system has not been cleared for the ablation of cardiac tissue or approved for the treatment of AF. We do not believe that our system is currently being used for its FDA-cleared indications and, accordingly, substantially all of our revenues are currently generated through the non-FDA-approved, or off-label, use of our system for the treatment of AF. While the FDA does not prevent doctors from using a product on an off-label basis, we cannot legally market a product for an off-label use. Because the AtriCure bipolar ablation system is currently our only significant product, the sustainability of our current operations, as well as our future viability, is dependent upon the continuation of sales of our system. We believe that sole-therapy minimally invasive treatment for AF represents the largest growth opportunity for us. If this market fails to develop, or the AtriCure bipolar ablation system is not widely adopted for use in this market, we may not achieve greater revenues or become profitable. In order to establish the sole-therapy minimally invasive AF treatment market, the current referral practices of doctors must change.

In December 2004, we requested clearance from the FDA for use of our system to ablate cardiac tissue, which currently remains under consideration by the FDA. After conducting necessary clinical trials, we intend to seek FDA approval as early as 2008 or 2009 for the use of our system to treat AF. We cannot assure you that approvals will be obtained. If FDA approval of the AtriCure bipolar ablation system for the treatment of AF were to be required in order for us to continue to market our system, not only would we no longer receive revenues from the sale of our system, but we also would require significant financing to conduct clinical trials and to sustain our operations until such time as sales could resume. We cannot assure you that approvals can be obtained, that we would have, or could raise, sufficient financial resources to sustain our operations pending FDA approval, or that, if and when the required approvals are obtained, there will be a market for the AtriCure bipolar ablation system. See the information under “Risk Factors—Risks Relating to Our Business.”

Our costs and expenses consist of cost of revenues, research and development expenses and selling, general and administrative expenses. Cost of revenues consists principally of the cost of purchasing and manufacturing our products. Research and development expenses consist principally of expenses incurred with respect to internal and external research and development activities and the conduct of clinical trials. With the FDA’s authorization, we have begun a clinical trial relating to use of the AtriCure bipolar ablation system to treat AF during open-heart surgery. We have also sought the FDA’s approval to conduct a clinical trial to demonstrate the feasibility of using our system as a sole-therapy minimally invasive treatment for AF. Selling, general and administrative expenses consist principally of costs associated with our sales and administrative functions, outside consultants and educational grants to medical institutions.

We expect our operating expenses to continue to increase in the future in absolute amount and as a percentage of revenue as a result of increased sales and marketing expenses incurred to foster our revenue growth, continued research and development relating to our AtriCure bipolar ablation system, increased general and administrative expenses to keep pace with our overall growth, the costs of being a public company and costs associated with seeking approval of our system for use in the surgical treatment of AF.

During 2005, we expect continued growth in our organization to support our expanding business. Managing that growth in a cost-effective manner will be important to achieving long-term profitability.

**Acquisition of Enable Medical Corporation**

Contemporaneously with the closing of this offering, we anticipate acquiring Enable, the manufacturer of our Isolator handpieces, for aggregate payments by us of $6.5 million if the closing of this offering and that transaction occurs on or before July 1, 2005 and $7.0 million if the closing of this offering and that transaction occurs after that date. To date, we have paid Enable $0.5 million towards this purchase price, which is not refundable unless the agreement is terminated due to a breach or failure by Enable. In accordance with the terms of this agreement, Enable paid a cash dividend of $0.5 million to its shareholders on January 31, 2005 and, immediately prior to the closing of our acquisition, Enable is entitled to make a cash dividend to its shareholders

of up to $0.5 million, subject to satisfaction of certain financial conditions. Enable generated total revenues of approximately $2.6 million for 2002, $4.6 million for 2003 and $6.9 million for 2004 and net income of approximately $0.6 million for 2002, $0.3 million for 2003 and $0.8 million for 2004. For the three months ended March 31, 2004 and 2005, Enable generated total revenues of approximately $2.1 million and $1.7 million, respectively, and net income of approximately $0.2 million and $0.1 million, respectively. In each of the last three years, we accounted for substantially all of Enable's revenues. We believe that our acquisition of Enable will provide us with better control over research, development and manufacturing activities and improve our margins, especially as we intend to expand the types and quantities of our products manufactured and sold. See "Business—Acquisition of Enable Medical Corporation" for additional information.

**Results of Operations**

***Three months ended March 31, 2004 compared to three months ended March 31, 2005***

**Total revenues.** Total revenues increased approximately $3.7 million, from approximately $3.8 million for the three months ended March 31, 2004, to approximately $7.5 million for the three months ended March 31, 2005. The increase was primarily attributable to an increase in the volume of units sold domestically and internationally and the addition of new products. The increase in units sold of our previously existing product line contributed approximately $2.7 million of the total increase in sales, while the addition of new products contributed approximately $1.3 million to the increase in revenues. While our average domestic selling price marginally increased from the first quarter 2004 to first quarter 2005, the increase in lower priced international sales as a percentage of total sales resulted in a marginal decline in our overall average selling price from first quarter 2004 to first quarter 2005. This marginal decline in our selling price partially offset the overall revenue increase by approximately $0.4 million.

**Cost of revenues.** Cost of revenues increased approximately $0.8 million, from approximately $1.1 million for the three months ended March 31, 2004 to approximately $1.9 million for the three months ended March 31, 2005, reflecting the approximately 100% increase in total units sold for the first three months of 2005 as compared to 2004. As a percentage of revenues, cost of revenues declined from 29% for the three months ended March 31, 2004 to 26% for the three months ended March 31, 2005. The primary factor contributing to the decrease was lower pricing as a result of the increase in units purchased.

**Research and development expenses.** Research and development expenses increased approximately $0.7 million, from approximately $1.0 million for the three months ended March 31, 2004 to approximately $1.7 million for the three months ended March 31, 2005. The increase was primarily attributable to the hiring of 12 additional full-time engineers, the expansion of our research and development activities to increase our product offerings and the expansion of our clinical trials. Our product development activities include projects to extend and improve the existing system, create new enabling devices such as new dissection, guidance and ablation tools, and research for new technologies. As a percentage of total revenues, research and development expenses decreased from 26% for the three months ended March 31, 2004 to 23% for the three months ended March 31, 2005, due to the more rapid growth of revenues. We anticipate increases in overall research and development spending to continue for the remainder of 2005, although we expect these costs to remain relatively flat as a percentage of revenues.

**Selling, general and administrative expenses.** Selling, general and administrative expenses increased approximately $2.4 million, from approximately $2.9 million for the three months ended March 31, 2004 to approximately $5.3 million for the three months ended March 31, 2005. The increase was primarily attributable to our overall growth, particularly the rapid expansion of our sales force to meet our growing market, an increase in facilities-related charges of approximately $0.3 million, and an increase in unrestricted grants of approximately $0.3 million. These additional sales personnel call on doctors to discuss the general attributes of our system, and respond in a non-promotional manner to unsolicited requests for information from doctors on the use of our system in the treatment of AF. These increases were partially offset by lower non-cash charges of

approximately $0.2 million associated with certain option grants. As a percentage of total revenues, selling, general and administrative expenses decreased from 77% for the three months ended March 31, 2004 to 70% for the three months ended March 31, 2004.

**Other interest income (expense), net.** Other interest income (expense), net decreased slightly from approximately $29,100 for the three months ended March 31, 2004 to approximately $20,800 for the three months ended March 31, 2005, primarily due to decreased cash and cash equivalents.

***Year ended December 31, 2003 compared to year ended December 31, 2004***

**Total revenues**. Total revenues increased approximately $9.4 million, from approximately $9.8 million for 2003 to approximately $19.2 million for 2004. The increase was primarily attributable to an increase of approximately 46% in the volume of units sold domestically and internationally and the addition of new products. The increase in units sold of our previously existing product line contributed approximately $4.6 million of the total increase in sales, while the addition of new products contributed approximately $5.4 million to the increase in revenues. While our average domestic selling price marginally increased in 2004 over 2003, the increase in lower priced international sales as a percentage of total sales resulted in a marginal decline in our overall average selling price year over year. This marginal decline in our selling price partially offset the overall revenue increase by approximately $0.6 million. We obtained numerous new accounts, as the AtriCure bipolar ablation system was reviewed in industry journals and doctors more widely adopted the use of our system. Included in total revenues is approximately $211,000 of commissions for 2004 from sales of certain cryothermy products.

**Cost of revenues**. Cost of revenues increased approximately $2.6 million, from approximately $2.6 million for 2003 to approximately $5.2 million for 2004 reflecting the approximately 100% increase in total units sold in 2004 as compared to 2003. Cost stability in our existing system and similar margin pricing strategies on our new product lines resulted in an increase in cost of revenues compared to 2003 consistent with the growth in total revenues since, as a percentage of revenues, cost of revenues remained the same at 27% for 2003 and 2004.

**Research and development expenses**. Research and development expenses increased approximately $1.9 million, from approximately $2.5 million for 2003 to approximately $4.4 million for 2004. The increase was primarily attributable to the hiring of an additional 9 engineers in 2004, the expansion of our research and development activities to increase our product offerings and the expansion of our clinical trials. Our product development activities include projects to extend and improve the existing system, develop a new device platform, create new enabling devices such as new dissection, guidance and ablation tools, and research new technologies. As a percentage of total revenues, research and development expenses decreased from 26% for 2003 to 23% for 2004, due to the more rapid growth of revenues. We anticipate an increase in overall research and development spending in 2005, although we expect these costs to remain relatively flat as a percentage of revenues.

**Selling, general and administrative expenses**. Selling, general and administrative expenses increased approximately $7.2 million, from approximately $8.0 million for 2003 to approximately $15.2 million for 2004. The increase was primarily attributable to an increases in headcount-related charges of approximately $4.2 million, an increase in facilities-related charges of approximately $0.9 million, and an increase in non-cash charges of $1.0 million associated with certain option grants. Headcount-related charges were primarily attributable to the rapid expansion of our sales force to meet our growing market. These additional sales personnel call on doctors to discuss the general attributes of our system, and respond in a non-promotional manner to unsolicited requests for information from doctors on the use of our system in the treatment of AF. As a percentage of total revenues, selling, general and administrative expenses decreased slightly from 82% for 2003 to 79% for 2004.

In 2004, we recorded a compensation charge of approximately $327,000 for stock options issued to employees during 2004 that, subsequent to their issuance, were determined to have been issued with exercise prices below market value. The market value of these options was determined by applying a multiplier to our projected revenues. This value was then reduced by approximately 20% to reflect the illiquidity of the options. Given the fact that we are in a rapid growth phase, but are still unprofitable, we determined that applying a multiplier, determined by comparison to other rapidly growing health care companies of generally similar size to us, was the most appropriate valuation method. The initial public offering price will be determined by negotiation by us and representatives of the underwriters, and we expect the final valuation of this offering will reflect similar factors, except for the elimination of the illiquidity discount. Based on a midpoint of $ per share of the estimated price range of this offering, the intrinsic value of all of our outstanding options at March 31, 2005 was .

**Other interest income (expense), net**. Other interest income (expense)—net decreased slightly from approximately $154,000 for 2003 to approximately $106,000 for 2004, primarily due to decreased cash and cash equivalents.

***Year ended December 31, 2002 compared to year ended December 31, 2003***

**Total revenues**. Total revenues increased approximately $8.0 million from approximately $1.8 million for 2002 to approximately $9.8 million for 2003. The increase was primarily attributable to the general commercial release of the AtriCure bipolar ablation system in January 2003.

**Cost of revenues**. Cost of revenues increased approximately $1.9 million, from approximately $0.7 million for 2002 to approximately $2.6 million for 2003. The increase was primarily attributable to increased volume of products sold as we introduced our cryothermy, or extreme cold, ablation device offering to our customers in 2003. As a percentage of total revenues, cost of revenues decreased from 39% for 2002 to 27% for 2003 due to efficiencies realized through increased volume.

**Research and development expenses**. Research and development expenses decreased approximately $0.2 million from approximately $2.7 million for 2002 to $2.5 million in 2003. The decrease was primarily attributable to the research, development and introduction of fewer new products in 2003 as compared to 2002. As a percentage of total revenues, research and development expenses decreased from 154% for 2002 to 26% for 2003. The decrease was primarily due to the more rapid growth of revenues.

**Selling, general and administrative expenses**. Selling, general and administrative expenses increased approximately $4.0 million, from approximately $4.0 million for 2002 to approximately $8.0 million for 2003. The increase was primarily attributable to an increases in headcount-related charges of approximately $3.3 million. As a percentage of total revenues, selling, general and administrative expenses decreased from 228% for 2002 to 82% for 2003. The decrease was primarily due to the more rapid growth of revenues.

**Other interest income (expense), net**. Other interest income (expense)—net increased approximately $1.0 million from approximately ($0.8 million) for 2002 to approximately $0.2 million for 2003. The increase was attributable to increase in cash and cash equivalents from receipt of proceeds of the issuance of our Series B preferred stock, offset by the interest attributable to the issuance of warrants in 2002 of approximately $0.5 million and the conversion into Series B preferred stock of bridge promissory notes in the amount of approximately $0.5 million in 2002.

**Pro Forma Results**

On a pro forma basis, after giving effect to the acquisition of Enable as if it had occurred on January 1, 2004 and other adjustments described in the notes to our pro forma combined financial statements included elsewhere in this prospectus, we would have had total revenues of approximately $19.9 million and $7.6 million, cost of

revenues of approximately $4.0 million and $1.4 million, research and development expenses of approximately $4.4 million and $1.7 million, selling, general and administrative expenses of approximately $16.2 million and $5.6 million, and other interest income, net of $102,000 and $24,000 for the year ended December 31, 2004 and for the three months ended March, 31 2005, respectively. Total revenues on a pro forma basis remained similar to our results for the full year 2004 results and three months ended March 31, 2005, since our purchases represented substantially all of Enable's sales for these periods. Cost of revenues on a pro forma basis decreased from our results for the full year 2004 and three months ended March 31, 2005, reflecting purchases at Enable's actual cost and the reclassification of $1.2 million and $0.4 million of research and development expenses, respectively, below gross profit as they are no longer billable costs. Research and development expenses on a pro forma basis are consistent with our results for the full year 2004 and three months ended March 31, 2005, after consideration of the reclassification discussed above. Selling, general and administrative expenses increased by approximately $1.0 million and $0.4 million, primarily due to the addition of Enable's overhead and the amortization of intangible assets recorded as a result of the Enable acquisition.

**Liquidity and Capital Resources**

From our inception, we have financed our operations primarily through private sales of preferred stock, with aggregate net proceeds of approximately $21.3 million of cash, excluding the conversion of approximately $4.7 million of promissory notes.

***Three months ended March 31, 2005 and 2004***

As of March 31, 2005, we had cash and cash equivalents of approximately $2.5 million, working capital of approximately $4.6 million and an accumulated deficit of approximately $32.0 million.

**Cash flows used in operating activities**. Net cash used in operations was approximately $0.5 million for the three months ended March 31, 2004 and $1.8 million for the three months ended March 31, 2005. The increase in cash used in operations is related primarily to an increase in operating losses before depreciation and preferred stock interest, and increases in accounts receivable and prepaid expenses.

**Cash flows used in investing activities**. Net cash used in investing activities was approximately $0.3 million for the three months ended March 31, 2004 and $1.0 million for the three months ended March 31, 2005. For each of these periods, cash used in investing activities reflected purchases of property and equipment and, for the three months ended March 31, 2005, a $0.5 million advance payment of a portion of the purchase price for Enable Medical Corporation.

**Cash flows from financing activities**. Cash flows from financing activities were approximately $5,000 for the three months ended March 31, 2005. Cash flows from financing activities reflected stock option exercises.

***Years ended December 31, 2004, 2003 and 2002***

As of December 31, 2004, we had cash and cash equivalents of approximately $5.2 million, working capital of approximately $6.6 million and an accumulated deficit of approximately $29.6 million.

**Cash flows used in operating activities**. Net cash used in operations was approximately $5.9 million for 2002, $3.8 million for 2003 and $3.8 million for 2004. For those periods, cash flow used in operating activities was attributable primarily to net losses after adjustment for non-cash charges related to depreciation, preferred stock interest and, in 2004, non-cash stock-based compensation and increases in accounts receivable, inventory and prepaid expenses resulting from the upward trend in business activities for 2002, 2003 and 2004. These increases in use of cash flow used in operating activities were partially offset by increases in accounts payable and accrued liabilities as a result of the upward trend in business activities.

**Cash flows used in investing activities**. Net cash used in investing activities was approximately $1.2 million for 2002, $1.3 million for 2003 and $1.5 million for 2004. For each of these periods, cash used in investing activities reflected purchases of property and equipment.

**Cash flows from financing activities**. Cash flows from financing activities were approximately $20.7 million for 2002, $18,000 for 2003 and $89,000 for 2004. Cash flows from financing activities during 2002 were primarily attributable to proceeds from the issuance of Series B preferred stock and a convertible note payable. For each of these periods, cash flows from financing activities also reflected stock option exercises.

**Preferred stock**. In 2001, we issued 8,293,579 shares of Series A preferred stock in exchange for approximately $4.0 million in cash and conversion of a $1.15 million promissory note that was issued in January 2001 and the related accrued interest of $49,958. In 2002, we issued 14,552,097 shares of Series B preferred stock in exchange for approximately $17.3 million in cash and conversion of $3.5 million convertible promissory notes that were issued in April 2002 and the related accrued interest of $35,000. In 2002, we also issued to holders of the convertible promissory notes warrants to purchase 741,607 shares of Series B preferred stock. The Series A preferred stock and Series B preferred stock currently have liquidation and dividend preferences and are convertible and redeemable upon the terms provided in our charter; however, pursuant to their terms, these shares will be converted into shares of our common stock on a one-for-one basis upon consummation of this offering, excluding the effect of the contemplated reverse stock split.

**Credit facility.** We entered into a $5.0 million credit facility on March 8, 2005 for working capital requirements. Any outstanding borrowings under the facility will bear interest at the prime rate plus 1.75% and our ability to draw down funds under this the facility terminates upon the earlier of September 1, 2005, the closing of this offering and upon other specified events. Under the terms of the facility, we are required to pay any monthly installments of interest only through August 2005 and monthly installments of principal and interest thereafter, in addition to a fee due at maturity on September 1, 2009 equal to 15% of the aggregate amount borrowed under the credit facility, with prepayment in whole allowed at any time without penalty. In connection with entering this facility, we granted Lighthouse a warrant to purchase 209,790 shares of our common stock, or shares into which such series of stock is converted, at a price of $2.97 per share. The warrants were valued with the assistance of an independent appraisal firm at $1.03, which has been recorded as deferred financing costs and will be amortized over the life of the credit facility. In addition, we granted Lighthouse a first perfected lien upon all our tangible and intangible assets, including accounts receivable, inventory, equipment, furniture and fixtures, but excluding intellectual property. There have been no borrowings pursuant to this facility as of March 31, 2005. The Company may use proceeds from this offering to repay any amounts borrowed under this credit facility, plus interest and fees.

**Uses of liquidity and capital resources.** Our future capital requirements depend on a number of factors, including possible acquisitions and joint ventures, the rate of market acceptance of our current and future products, the resources we devote to developing and supporting our products, future expenses to expand and support our sales and marketing efforts, costs relating to changes in regulatory policies or laws that affect our operations and costs of filing, prosecuting, defending and enforcing our intellectual property rights. We expect to increase capital expenditures consistent with our anticipated growth in research and development, manufacturing, infrastructure and personnel. In addition, we intend to acquire Enable contemporaneously with the closing of this offering for aggregate payments by us of $6.5 million if the closing of this offering occurs on or before July 1, 2005 and $7.0 million if the closing of this offering occurs after that date. To date, we have paid Enable $0.5 million as an advance towards the final purchase price, which is not refundable unless the agreement is terminated due to a breach or failure by Enable. In January 2005, Enable made a cash dividend to its shareholders of $0.5 million. Prior to our acquisition, Enable is entitled, subject to certain conditions, to make an additional cash dividend to its shareholders of up to $0.5 million.

We believe that net proceeds from this offering, together with our current cash and cash equivalents and the cash we expect to generate from operations, will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

The following table summarizes information about our contractual obligations as of December 31, 2004:

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| Contractual Obligation | Total | Less than 1 Year | 1-3 Years | 3-5 Years | More than 5 Years |
| Office lease | $517,730 | $117,222 | $234,444 | $166,064 | $ — |

Pursuant to the terms of the master development, manufacturing and supply agreement with Enable, we were required to pay Enable a monthly fee of at least $96,000 for certain product development services during the period from February 1, 2003 to January 31, 2004. After January 31, 2004, there is no specified monthly fee requirement. Pursuant to a development agreement with Stellartech Research Corporation, we are required to purchase a minimum number of ASUs. After we have purchased that minimum, we are obligated to purchase a percentage of our requirements for ASUs from Stellartech for a period of two years from the date we fulfill our minimum purchase obligation. The agreement has an initial five-year term, and we may terminate it in the event the development agreement is terminated prior to expiration, after we have fulfilled our purchase requirements under the agreement or upon the payment of a termination fee. See "Business—Manufacturing."

**Off Balance Sheet Arrangements**

We do not have any off balance sheet arrangements.

**Critical Accounting Policies and Estimates**

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

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

**Stock-based compensation.** We account for employees stock options using the intrinsic value method in accordance with Accounting Principles Board ("APB") No. 25, *Accounting for Stock Issued to Employees*, Financial Accounting Standards ("FASB") Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation*, and related interpretations. We have adopted the disclosure-only provisions of Statement of Financial Accounting Standards ("SFAS") No. 123, *Accounting for Stock Based Compensation*, as amended.

The information regarding net loss as required by SFAS No. 123, presented in Note 1 to our financial statements, has been determined as if we had accounted for our employee stock options under the fair value method. As there is no public market for our stock, determination of fair value requires significant judgment. The resulting effect on net loss pursuant to SFAS No. 123 is not likely to be representative of the effects on net loss pursuant to SFAS No. 123 in future years, since future years are likely to include additional grants and the irregular impact of future years' vesting.

**Revenue recognition.** Revenues are generated primarily from the sale of the AtriCure bipolar ablation system. Product revenue is recognized when products are shipped to customers, and includes shipping revenue of approximately $8,000 for 2002, $43,000 for 2003 and $87,000 for 2004. Cost of freight is included in cost of goods sold. Commission income is recognized from sales of certain cryothermy products as sales are made on which the commission is earned. Customers and distributors generally have no right of return.

We comply with SEC Staff Accounting Bulletin No. 101, *Recognition in Financial Statements*, or SAB 101, as amended by SAB 104. SAB 101 sets forth guidelines on the timing of revenue recognition based upon factors such as passage of title, installation, payment terms and ability to return products. We recognize revenue when all of the following criteria are met: persuasive evidence that an arrangement exists; delivery of the products or services has occurred; the selling price is fixed or determinable; and collectibility is reasonable assured.

**Inventory.** Inventories, consisting of finished goods, are stated at the lower of cost or market using the first-in, first-out cost method. We review our inventory balances monthly for obsolete inventory. Once inventory is determined to be obsolete, which requires judgment, the item is written down.

**Deferred tax asset valuation allowance.** Our estimate for the valuation allowance for deferred tax assets requires us to make significant estimates and judgments about our future operating results. Our ability to realize the deferred tax assets depends on our future taxable income as well as limitations on their utilization. A deferred tax asset is reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred tax asset will not be realized prior to its expiration. The projections of our operating results on which the establishment of a valuation allowance is based involve significant estimates regarding future demand for our products, competitive conditions, product development efforts, approvals of regulatory agencies, and product cost. If actual results differ from these projections, or if our expectations of future results change, it may be necessary to adjust the valuation allowance.

**Quantitative and Qualitative Disclosures About Market Risk**

We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions.

For the year ended December 31, 2004, none of our sales were denominated in currencies other than U.S. dollars. Although all of our sales and purchases are currently denominated in U.S. dollars, future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. We invest our excess cash primarily in U.S. government securities, corporate bonds and commercial paper. Accordingly, we believe that, while the instruments we hold are subject to changes in the financial standing of the issuer of such securities, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments.

## BUSINESS

### Overview

We develop, manufacture and sell innovative surgical devices designed to create precise lesions, or scars, in soft tissues. Medical journals have described the adoption by leading cardiothoracic surgeons of the AtriCure bipolar ablation system as a standard treatment alternative during open-heart surgical procedures to safely, rapidly and reliably create lesions in cardiac, or heart, tissue to block the abnormal electrical impulses that cause atrial fibrillation, or AF, a rapid, irregular quivering of the upper chambers of the heart. AF is associated with an increased risk of stroke and is often accompanied by such symptoms as fatigue, shortness of breath and heart palpitations.

The Food and Drug Administration, or FDA, has cleared the AtriCure bipolar ablation system for the ablation, or destruction, of soft tissues in general and non-cardiac related surgical procedures but to date has not cleared our system for cardiac use or approved our system for the treatment of AF. In December 2004, we requested clearance from the FDA for use of our system to ablate cardiac tissue, which currently remains under consideration by the FDA. After conducting necessary clinical trials, we intend to seek FDA approval as early as 2008 or 2009 for the use of our system to treat AF, which we view as our market opportunity. In addition, we submitted an application to the FDA in January 2005 to conduct a clinical trial to demonstrate the feasibility of using our system as a sole-therapy (not in connection with a separate open-heart procedure) minimally invasive AF treatment.

Cardiothoracic surgeons have adopted our system to treat AF in over 16,000 patients since its general commercial release in the United States in January 2003. Sales of our system reached approximately $19.0 million during 2004, the second full year of general sales of our system. We do not believe that our system is currently being used for its FDA-cleared indications, and, accordingly, substantially all of our revenues are currently generated through the non-FDA-approved, or off-label, use of our system for the treatment of AF. Although the use of our system to treat AF remains investigational and we are still seeking FDA approval in connection with use of our system in the treatment of AF, independent clinical studies conducted at leading cardiac care centers provide support for our system's ability to safely, rapidly and reliably create the lesions needed to block the abnormal electrical impulses that cause AF. We believe that those studies indicate that we have a significant competitive advantage in the treatment of AF.

AF is the most common sustained cardiac arrhythmia, or irregular heartbeat, encountered in clinical practice and accounts for more doctor visits and hospital days than any other cardiac arrhythmia. According to the Framingham Study published in 2004, one in four people over the age of 40 in the United States has a lifetime risk of developing AF, and the incidence of AF increases with age. More than five million people worldwide, including approximately 2.5 million Americans, are currently afflicted with AF. According to the American Heart Association, 15% of the estimated 700,000 strokes that occur annually in the United States are attributable to AF and people with AF are approximately five times more likely to have a stroke.

AF is a condition that doctors often find difficult to treat, and historically there has been no widely accepted cure for AF. Doctors typically begin treating AF with drugs, which are often ineffective, not well tolerated and may be associated with serious side effects. Patients who cannot effectively be treated with drugs occasionally undergo catheter-based procedures to treat their AF, but catheter-based procedures have not been widely adopted because they are technically challenging, can be associated with serious complications and yield inconsistent results. Implantable devices, such as pacemakers and defibrillators, are sometimes used to reduce the frequency and symptoms of AF, although they do not treat the underlying disease. In the past, an open-heart surgical procedure known as the classic Maze was used to treat AF, but this procedure has not been widely adopted because it is technically challenging, highly invasive and involves long recovery times.

The creation of transmural, or full-thickness, lesions is thought to be a critical factor in the successful treatment of AF when performing ablation treatments. Prominent medical journals describe how cardiothoracic surgeons have used our system to safely, rapidly and reliably create transmural lesions when treating AF either during an elective open-heart surgical procedure, such as bypass or valve surgery, or as a sole-therapy minimally invasive procedure. As indicated in these studies, cardiothoracic surgeons using our system have created

individual transmural lesions in the heart in a matter of seconds and have treated AF in approximately 20 minutes during open-heart surgical procedures and in approximately three hours as a sole-therapy minimally invasive procedure.

We believe that the AtriCure bipolar ablation system is currently a market leader in the treatment of AF during open-heart surgical procedures, such as bypass or valve surgery, and our system is also being evaluated in independent clinical studies as a sole-therapy minimally invasive treatment for AF. Our system is currently being used in 22 of the 25 highest volume heart centers in the United States. Studies published in *The Journal of Thoracic and Cardiovascular Surgery* found that approximately 90% of study participants treated using our system were free of AF at six-month follow-up. This success rate was achieved both when our system was used as a sole-therapy minimally invasive approach and when it was used during open-heart surgical procedures. We believe the overall demand for our system will increase, including demand for our system as a sole-therapy minimally invasive AF treatment, which we believe will ultimately represent our largest growth opportunity.

We were incorporated in the State of Delaware in October 2000 in connection with a spin-off transaction from Enable, in which shares of our common stock were given to the Enable shareholders. The spin-off was intended to allow us to focus on the development of products designed to treat AF and to raise capital for that purpose, while Enable continued its broader research and manufacturing activities. We recently entered into a merger agreement providing for our acquisition of Enable, the manufacturer of our disposable Isolator handpieces, which are an essential component of the AtriCure bipolar ablation system. The Enable acquisition is anticipated to close contemporaneously with the closing of this offering. See “Business—Acquisition of Enable Medical Corporation” and “Business—Manufacturing.”

**Market Opportunity**

AF is a condition where abnormal electrical impulses cause the atria, or upper chambers of the heart, to fibrillate, or quiver, at rapid rates of 400 to 600 times per minute. As a result of this quivering, blood in the atria becomes static, creating an increased risk that a blood clot will form and cause a stroke or other serious complications. If AF persists, patients generally progress from experiencing AF intermittently to having AF continuously, a condition that is more difficult to treat. Symptoms of AF may include heart palpitations, dizziness, fatigue and shortness of breath, and these symptoms can be debilitating and life threatening in some cases. Although there is often no apparent cause of a patient’s AF, the condition is often associated with high blood pressure and other forms of heart disease.

AF is the most commonly diagnosed sustained cardiac arrhythmia, and affects more than five million people worldwide, including more than 2.5 million Americans, where approximately 160,000 new cases of AF are diagnosed each year. According to an article in the April 2001 edition of *The New England Journal of Medicine*, it is estimated that the incidence of AF doubles with each decade of an adult’s life. AF affects approximately 6% of all people 65 years and older in the United States. Studies show that one in four people over the age of 40 in the United States has a lifetime risk of developing AF, and the incidence of AF increases with age.

According to the American Heart Association, people with AF are approximately five times more likely to have a stroke, and AF is thought to be responsible for 15% of the estimated 700,000 strokes that occur annually in the United States. According to the National Center for Health Statistics, AF also accounts for an estimated 1.4 million outpatient visits and more than 227,000 hospitalizations annually in the United States. According to Medtech Insight, AF accounts for more than $6 billion in healthcare costs each year in the United States. The Centers for Disease Control and Prevention reports that the number of diagnosed AF cases in the United States will continue to increase. AF is an underdiagnosed condition due in large part to the fact that patients with AF often have mild or no symptoms, and their AF is only diagnosed when they seek treatment for an associated condition, such as a stroke or heart disease. We believe that increasing awareness of AF and improved diagnostic screening will result in an increase in the number of patients diagnosed with AF. Also, since the prevalence of

AF increases with age, there will likely be an increase in the number of diagnosed AF patients in the United States as the population ages. Of the patients undergoing open-heart surgery in the United States, we estimate that 10% of these patients are candidates for surgical ablation using our system.

Of the United States population diagnosed with AF, approximately 12% of these patients are symptomatic, do not respond to drug therapy and have no other operable form of heart disease. For these patients, the classic Maze procedure is typically too invasive and catheter-based treatments have not been widely adopted. Accordingly, we believe that there is a large population of undertreated patients who would potentially benefit from sole-therapy minimally invasive AF treatment using our system, and that these patients will ultimately comprise our largest growth opportunity.

Because the FDA has not cleared or approved our system for the ablation of cardiac tissue or the treatment of AF, we and others acting on our behalf may not promote our system for these uses, make any claim that our system is safe and effective for these uses or train doctors to use our system for these uses. However, these restrictions do not prevent doctors from choosing to use our system for the treatment of AF or prevent us from engaging in sales and marketing efforts that focus only on the general attributes of our system and not on the ablation of cardiac tissue or the treatment of AF. Although we educate and train doctors as to the general skills involved in the proper use of our system and its technology, we do not educate or train them to use our system for the ablation of cardiac tissue or the surgical treatment of AF.

**Current Treatment Alternatives**

Doctors usually begin treating AF patients with a variety of drugs intended to prevent blood clots, control heart rate or restore the heart to normal rhythm. If a patient's AF cannot be adequately treated with drug therapy, doctors may perform one of several procedures that vary depending on the severity of the AF and whether the patient suffers from other forms of heart disease. Current AF treatment alternatives to the use of our system for surgical ablation during an open-heart surgical procedure or as a sole-therapy minimally invasive procedure, generally consist of the following:

- *Drugs.* Currently available drugs are often ineffective, not well tolerated and may be associated with severe side effects. For these reasons, drug therapy for AF fails for as many as 60% of patients within two years. Of those who initially respond to drug therapy, only approximately 25% of patients can continue to be managed with drugs after five years.
- *Implantable Devices.* Implantable devices, such as defibrillators and pacemakers, can be effective in reducing the symptoms and number of AF episodes, but neither device is intended to treat AF. Patients may continue to experience the adverse effects of AF as well as some of the symptoms, including dizziness and fatigue, because the AF continues.
- *Catheter-Based Treatment.* Catheter-based AF treatments are technically challenging, can be associated with serious complications and yield inconsistent results. In proportion to the prevalence of AF, only a small number of catheter-based AF treatments are performed each year in the United States.
- *Classic Maze.* The classic Maze procedure is a highly invasive open-heart surgical procedure that involves cutting and sewing back together sections of the heart in order to eliminate the abnormal electrical impulses causing AF. Although this procedure is highly effective at treating AF, it is rarely performed because it requires extensive open-heart surgery, is technically challenging and is typically associated with long recovery times. For these reasons, only a limited number of these procedures have been performed by a small number of cardiothoracic surgeons.

**The AtriCure Solution**

We believe that traditional surgical and catheter-based ablation devices are not able to safely, rapidly and reliably create the transmural lesions required to block the abnormal electrical impulses that cause AF.

Independent clinical studies conducted at prominent cardiac care centers show that cardiothoracic surgeons have adopted the AtriCure bipolar ablation system for the treatment of AF during elective open-heart surgical procedures. These studies indicate that one of the reasons for our system's high market penetration and rapid adoption is that it allows cardiothoracic surgeons to simplify the classic Maze procedure with a faster, less invasive and less technically challenging approach that appears to have comparable effectiveness. Our system is also being evaluated in independent clinical studies by leading cardiac surgeons as a sole-therapy minimally invasive treatment for AF.

Independent, preliminary clinical studies are being conducted at prominent cardiac care centers, including the Cleveland Clinic and Washington University, to demonstrate the efficacy, ease of use and safety of our system:

***Efficacy***. AF treatment devices must be able to reliably create transmural lesions that block electrical impulses. Transmurality is considered by doctors to be necessary for the treatment of AF, since creating lesions with gaps can fail to treat AF and cause other abnormal heart rhythms. A leading group of cardiothoracic surgeons from Washington University published the results of an independent clinical study in the October 2004 edition of *The Journal of Thoracic and Cardiovascular Surgery*, in which approximately 90% of the 40 study participants treated for AF using our system while undergoing an open-heart surgical procedure were free of AF at six-month follow-up. An approximate 90% success rate was also obtained at six-month follow-up in an independent initial 27-patient study at the University of Cincinnati when our system was used as a sole-therapy minimally invasive AF treatment. We are seeking to confirm these results in the FDA-approved clinical study that we have initiated on the use of our system during elective open-heart surgery and in the sole-therapy minimally invasive study that we anticipate initiating upon obtaining FDA authorization.

***Ease of Use.*** In these studies, cardiothoracic surgeons reported that our system is easy to use based in part on the design and automated features of our ablation and sensing unit, or ASU. Our ASU does not require the surgeon to make any prior settings or adjustments, and signals the surgeon when the targeted tissue no longer conducts energy, indicating that the lesion is transmural, or full-thickness. Our system's unique jaws firmly clamp and compress the targeted tissue being ablated, allowing surgeons to create in a matter of seconds transmural lesions that are required to block the abnormal electrical impulses that cause AF. Cardiothoracic surgeons report that they have generally treated AF in only 20 minutes when using our system during an open-heart procedure, or in approximately three hours when using our system to treat AF as a sole-therapy minimally invasive procedure.

***Safety***. These studies found our system to be a safe treatment alternative for the surgical treatment of AF. Cardiothoracic surgeons participating in these studies concluded that our system reduced the risk of blood clots, strokes and damage to adjacent anatomical structures due to its design, which confines the delivery of energy to within the jaws of the handpiece and allows the surgeon to control the application of energy to the tissue targeted for ablation.

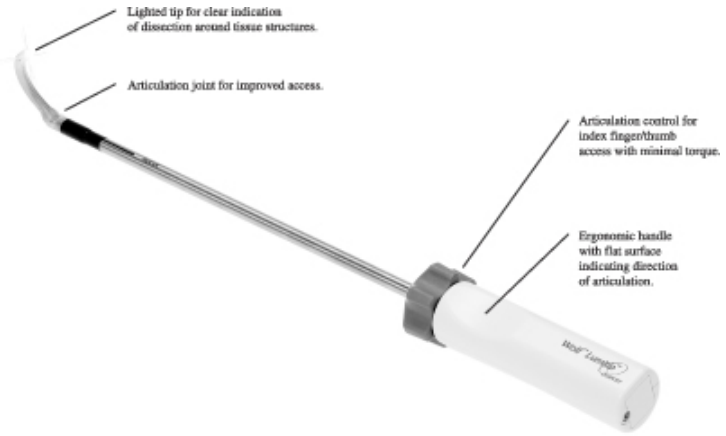
We cannot assure you that we will receive FDA clearance for the ablation of cardiac tissue or approval for the treatment of AF. If the lack of FDA clearance or approval were to prevent sales of our system, we would lose all or substantially all of our revenues and would require significant financing to conduct the necessary clinical trials and sustain our operations until sales could resume.

**AtriCure Products**

The AtriCure bipolar ablation system consists of our ASU and a series of uniquely designed disposable Isolator handpieces. Our ASU is a compact power generator that uses our proprietary software and delivers bipolar radio-frequency energy. Based on our proprietary software, the energy delivered to the tissue varies depending on the thickness and type of tissue being ablated. Currently, we sell four different Isolator handpieces of various configurations and we generally lend our ASU to doctors and hospitals that purchase our disposable handpieces. All of our Isolator handpieces have jaws that are capable of compressing individual or multiple layers of tissue to direct and confine the treatment to the tissue targeted for ablation.


In addition to the AtriCure bipolar ablation system, we have designed a pen-shaped bipolar ablation device that is complementary to our system. This device is disposable and is powered by the same ASU that powers the AtriCure bipolar ablation system. Because of the device's slim, pen-shaped design, it is well suited to be used in minimally invasive procedures and to create transmural lesions in difficult to reach anatomy. In January 2005, we submitted a 510(k) application to the FDA requesting clearance for use of our pen device for the ablation of cardiac tissue. Subject to FDA clearance, we anticipate releasing this device for sale in the second half of 2005.

We also sell the Wolf Dissector, a product cleared by the FDA for use on thoracic and certain other non-cardiac soft tissues. The Wolf Dissector was designed by Dr. Randall Wolf, a leader in the field of minimally invasive cardiothoracic surgery. This dissection tool is used by surgeons to separate tissues surrounding the heart to provide access to key anatomical structures that are targeted for ablation during sole-therapy minimally invasive AF treatments. The Wolf Dissector is a disposable handpiece that consists of a minimally invasive shaft with an articulating index finger-shaped tip that illuminates. The illuminated tip allows surgeons to more easily determine the movement, direction and position of the device during minimally invasive procedures.




We also distribute an ablation device that uses cryothermy, or extreme cold, to ablate tissues. Some surgeons use this device in conjunction with our system to create lesions around heart valves as part of AF treatment.

***Open-Heart Procedure***

During elective open-heart surgical procedures, such as bypass or valve surgery, cardiothoracic surgeons use the AtriCure bipolar ablation system to treat patients with AF. Surgeons report that ablation using our system generally adds approximately 20 minutes to an open-heart surgical procedure and typically does not impact the length of a patient's hospital stay or recovery time. Surgeons use our system to create sets of lesions that may vary depending on the length of time a patient has been diagnosed with AF and whether the patient's AF is intermittent or continuous. Patients who have been diagnosed with AF for a longer period and have more continuous AF generally receive more ablation treatment than patients who have been diagnosed with AF for a shorter period or who have intermittent AF. Ablation using our system during an open-heart procedure typically involves the following steps:

*Pulmonary Vein Isolation*. Regardless of the duration or type of AF, surgeons will create lesions in the tissue surrounding the pulmonary veins to create an electrical barrier between the pulmonary veins and the upper chamber of the heart. In patients with intermittent AF, those lesions are often the extent of the treatment required to treat their AF. Cardiothoracic surgeons report that using our system enables them to safely, rapidly and reliably create lesions to achieve electrical isolation of the pulmonary veins from the upper chambers of the heart. In order to perform this procedure, surgeons position the jaws of our Isolator handpiece on the cardiac tissue surrounding the pulmonary veins. The jaws are clamped and the system is activated. Seconds later, an audible tone alerts the surgeons that the tissue no longer conducts energy, indicating that the lesion has become transmural and that the pulmonary veins have been electrically isolated.

*Additional Lesions*. For those patients who have been diagnosed with AF for a longer period and have more continuous AF, doctors may determine that additional lesions may be required to treat their AF. In cases where patients require such additional lesions, surgeons may use our system to create lesions in the upper chambers of

the heart that are intended to reproduce the electrical barriers that are created by surgeons during the classic Maze procedure. As with pulmonary vein isolation, doctors report that each lesion generally takes only seconds to create using our system.

***Sole-Therapy Minimally Invasive Procedure***

For those patients with AF that do not require an open-heart surgical procedure, surgeons have used our system as a sole-therapy minimally invasive treatment for AF. Using relatively standard minimally invasive surgical techniques, without the need to place patients on a heart-lung bypass machine, our system is used to isolate the pulmonary veins to treat AF. One of the key potential advantages of our sole-therapy minimally invasive treatment is the removal or mechanical isolation of the left atrial appendage, the small appendage that is attached to the left atrium. This appendage is believed to be responsible for the majority of strokes associated with AF. In order to perform this minimally invasive treatment, surgeons insert a lighted scope and other instruments through small incisions in the patient's chest. Surgeons report that the entire procedure takes approximately three hours and that the typical recovery time is approximately three days.

**Business Strategy**

Our mission is to expand the treatment options for those patients who suffer from AF through the continued development of our proprietary technology platform and the education of medical professionals concerning our unique technologies. The key elements of our strategy include:

***Form Investigational Relationships with Key Opinion Leaders at Leading Institutions***. We have formed investigational relationships with key opinion leaders at several leading cardiac care centers, such as the Cleveland Clinic, the Mayo Clinic, Brigham and Women's Hospital, Washington University and the University of Cincinnati. Several of these key opinion leaders have worked with us from the inception of our company to develop our system. Additionally, they have evaluated our system and published peer-reviewed data that describes the use of our system as a treatment for AF. These opinion leaders continue to assist us with the design, clinical testing and evaluation of our products. To date, there have been approximately 15 peer-reviewed publications that describe our system's ability to create cardiac lesions in order to treat AF. We believe that these publications, and the presentations given by key opinion leaders, have contributed to the adoption of our system as a standard treatment alternative for AF during open-heart surgical procedures.

***Provide Product Education.*** We have recruited and trained sales professionals who have strong backgrounds in the medical device field to effectively communicate to doctors the unique features and benefits of our technology as they relate to the ablation of soft tissue. Our highly trained sales professionals meet with doctors at leading institutions to provide education and technical training relating to our products. Additionally, we have provided unrestricted educational grants to institutions that have facilitated the education of doctors concerning the treatment of AF, including the use of our system to treat AF. Through the education and publication process, we believe that awareness of our technology has grown, which will encourage doctors to use our products and refer patients for AF treatment using our system.

***Introduce and Expand Adoption of Our Sole-Therapy Minimally Invasive Procedure.*** There is currently no widely adopted sole-therapy treatment to cure AF. Currently, independent investigators are collecting clinical data, including data relating to safety and efficacy, to evaluate our system as a sole-therapy minimally invasive AF treatment. The encouraging results from an independent study conducted at the University of Cincinnati were used as a basis for our January 2005 investigational device exemption, or IDE, submission to the FDA requesting approval to conduct a clinical trial to demonstrate the feasibility of using our system as a sole-therapy minimally invasive AF treatment. The feasibility study, if successful, would likely be followed by a larger scale pivotal trial. The successful completion of our feasibility study will be the first step in obtaining FDA approval for use of our system as a sole-therapy minimally invasive AF treatment. We have modified our Isolator handpiece and developed other products to enable surgeons to ablate tissues through this minimally invasive approach. To date, our system has been used successfully in over 200 sole-therapy minimally invasive procedures to treat AF.

***New Product Innovation.*** Medical journals describe how leading cardiothoracic surgeons have used our system to safely, rapidly and reliably create transmural lesions when treating AF. We believe that our system is a premier product that can be adapted for a variety of applications where surgeons need to create transmural lesions in soft tissues. We are expanding our technology platform to increase our market for products being used during open-heart surgical procedures. For example, we plan to investigate the use of our technologies in patients who have no history of AF yet are undergoing open-heart surgery and may be predisposed for developing AF, including patients at risk of developing post-operative AF, a temporary complication associated with cardiac surgery. We intend to leverage our leadership position in open-heart surgical ablation and expand our technology platform to provide a widely adopted solution for a sole-therapy minimally invasive AF treatment. In addition, we are currently developing a product that will enable surgeons to mechanically isolate a portion of the heart known as the left atrial appendage, which is believed to be responsible for the majority of AF-related strokes. We believe that the successful development of our left atrial appendage technology will add to the demand for surgical AF treatment by offering patients a one-step solution to AF treatment and stroke reduction. Additionally, we are pursuing business development opportunities that will expand our technologies and capabilities to provide additional solutions for the treatment of AF.

**Clinical Trials**

We are currently conducting an FDA-approved clinical trial, known as the RESTORE-SR trial, to demonstrate the safety and efficacy of the AtriCure bipolar ablation system in treating AF during certain elective open-heart surgical procedures. To date, we have enrolled approximately 3% of the patients required for this multicenter, 226-patient clinical trial. If the clinical trial is successful, we anticipate filing a premarket approval application, or PMA, in 2008, that if approved by the FDA would allow us to market our system as an AF treatment during open-heart surgical procedures.

In January 2005, we filed with the FDA for an IDE, which allows a non-FDA approved device to be used in clinical studies undertaken to develop safety and effectiveness data for that device. We are in the process of working with the FDA in connection with the approval of this IDE to conduct a clinical trial to demonstrate the feasibility of our system for the sole-therapy minimally invasive treatment of AF. If the FDA permits this clinical trial to proceed and it is successful, we plan to work with the FDA to submit an amendment to this IDE to permit us to conduct a pivotal clinical trial to demonstrate the safety and efficacy of the AtriCure bipolar ablation system in treating AF as a sole-therapy minimally invasive approach. Each clinical study that we intend to complete will require a separate IDE or an amendment to an existing IDE. There is a 30-day time period for the FDA to act on an IDE or an amendment to an IDE and the FDA typically requests additional information prior to granting approval for a study to proceed. We generally expect that it will take several months after we file an IDE or an IDE amendment to obtain FDA approval.

**Regulatory Clearances**

In August 2001, the FDA granted us 510(k) clearance to market the AtriCure bipolar ablation system for the ablation and coagulation of soft tissues during general, ear, nose and throat, thoracic, gynecologic and urologic surgical procedures. This current 510(k) clearance does not allow us to market our system for the ablation of cardiac tissue or for the treatment of AF. In December 2004, we made a new submission to the FDA seeking clearance for use of our system on cardiac tissue. In this submission, we have attempted to address the concerns that were raised by the FDA in response to our prior submissions. Earlier in our company's history, we attempted twice to obtain clearance from the FDA for use of the AtriCure bipolar ablation system to ablate cardiac tissue, and each time the FDA found significant deficiencies in our submission. In November 2001, the FDA rejected our request for clearance to ablate cardiac tissue and treat cardiac arrhythmias, including AF, based in part on the fact that our system was not substantially equivalent to a previously cleared 510(k) device, which is a requirement for the FDA to grant 510(k) clearance to a system such as ours. In July 2004, the FDA granted us clearance to market our Wolf Dissector for its intended use of dissection of soft tissues during thoracic surgical procedures.

We received our original CE Mark approval for the AtriCure bipolar ablation system in July 2002, which allows us to market and sell the AtriCure bipolar ablation system throughout the European Union for the same uses for which it may currently be marketed in the United States. We have also received certifications to market and sell our system in several other foreign markets, including Canada and Japan. Additionally, we have begun the process of registration in China and Brazil where we expect approval for commercialization in these markets during 2005 and we are actively pursuing registration in other countries outside of the United States. We are also pursuing certifications or approvals outside of the United States for the Wolf Dissector and, assuming we obtain such approval or certification, we anticipate releasing the Wolf Dissector for sale in the European Union in 2005.

**Sales, Marketing and Medical Education**

Our sales and marketing efforts focus on educating doctors concerning our unique technologies and the benefits of the AtriCure bipolar ablation system. We do not market or promote the use of our system for the treatment of AF or the ablation of cardiac tissue. Our sales personnel call on cardiothoracic surgeons, electrophysiologists and other doctors to discuss the general attributes of our system. We train our sales force on the use of our system to treat AF so that they are able to respond to unsolicited requests from doctors for information on the use of our system for the treatment of AF. We have entered into consulting agreements with leading scientists, cardiothoracic surgeons and electrophysiologists who assist us with the design, clinical testing and evaluation of our products, educate doctors on the use of our technologies and provide advice concerning grants and regulatory submissions. We work closely with these thought leaders to understand unmet needs and emerging applications in the treatment of AF. We also provide unrestricted educational grants to several leading cardiac care centers. These institutions have used these grants to sponsor independent activities to evaluate the effectiveness of our system and our technology, which has increased the number of peer-reviewed publications that cite the use of our system. These unrestricted grants have also been used by these institutions to sponsor educational programs relating to AF, including programs which focus on the surgical treatment of AF using our system.

We have recently formed a healthcare compliance committee in support of our ongoing efforts to improve compliance with applicable federal and state healthcare laws and regulations. This committee has recently instituted standard operating procedures relating to our marketing and promotional activities, grant review and funding procedures, and the training and education of our sales force. We have modified our training and educational programs to include training on federal and state requirements for marketing medical devices, and we have revised and maintain continuous oversight of our grant application and funding procedures and requirements.

Our sales team is led by a vice president of sales and two sales directors. As of May 31, 2005, our sales force had a total of approximately 31 employees, including 21 full-time regional sales representatives. We also use several independent manufacturers' representatives in the United States. We select our sales personnel based on their expertise in the medical device field, sales experience, reputation in the medical device industry, and their knowledge of our products and technologies. We plan to continue to increase the size of our sales organization to expand our customer base and to increase utilization of our system by our customer base.

We market and sell our products in selected markets outside of the United States through independent distributors. During 2004, sales outside of the United States accounted for approximately 7.4% of our total revenues. We have a network of distributors outside of the United States who currently market and sell our products in Asia, Europe, the Middle East and South America. We continue to expand our presence in markets outside of the United States, including our recent entry into China and planned sales to Brazil in 2005. See "Risk Factors—Risks Relating to Our Business—We sell the AtriCure bipolar ablation system outside of the United States and are subject to various risks relating to international operations, which could harm our international revenues and profitability."

**Competition**

Our industry is highly competitive, subject to change and significantly affected by new product introductions and other activities of industry participants. Many of our competitors have significantly greater financial and human resources than we do and have established reputations with our target customers, as well as worldwide distribution channels that are more established and developed than ours. Our primary competitors include Guidant Corp., Medtronic, Inc., St. Jude Medical Inc., Boston Scientific Corp., Edwards Lifesciences Corp. and CryoCath Technologies Inc. Currently, no company has received FDA approval or clearance to market an ablation system for use as a treatment for AF. However, our competitors have FDA clearance to market their products that utilize a single pole design to ablate cardiac tissue. We and our competitors provide products that have been adopted by doctors for the off-label treatment of AF.

We and many of our competitors have developed surgical ablation devices that have been used to treat AF during open-heart surgical procedures. These companies utilize a variety of different technologies as energy sources for their ablation devices, including laser technology, microwave, cryothermy, high-intensity focused ultrasound, and radio frequency technologies. Each of these companies is also currently working with its core technology to develop devices that can be used as a sole-therapy minimally invasive AF treatment.

Some of our competitors offer catheter-based treatments, including Biosense Webster, Inc., EP Technologies, St. Jude Medical, Inc., and Cardima, Inc. These companies sell products that are used by doctors to treat the population of patients that have AF but are not candidates for open-heart surgery, which is the same group of patients that we believe would most benefit from sole-therapy minimally invasive AF treatments using the AtriCure bipolar ablation system. Some of these catheter-based treatments already have FDA clearance or approval for cardiac use, including the treatment of certain arrhythmias, although none has approval for the treatment of AF.

We believe that we compete favorably against companies that have products that are currently being used for the surgical treatment of AF, particularly in the market for devices that are being used for the treatment of AF as a sole-therapy minimally invasive procedure, although we cannot assume that we will be able to continue to do so in the future or that new devices that perform better than our system will not be introduced. We also believe that our system competes favorably when compared to catheter-based treatments.

Because of the size of the AF market and the unmet need for an AF cure, competitors have and will continue to dedicate significant resources to aggressively market their products. New product developments that could compete with us more effectively are likely because the surgical AF treatment market is characterized by extensive research efforts and technological progress.

Competitors may develop technologies and products that are safer, more effective, easier to use or less expensive than our system. To compete effectively, we have to demonstrate that our system is an attractive alternative to other treatments by differentiating our products on the basis of safety, efficacy, performance, ease of use, brand and name recognition, reputation, service and price. We have encountered and expect to continue to encounter potential customers who, due to existing relationships with our competitors, are committed to or prefer the products offered by these competitors. We expect that competitive pressures may result in price reductions and reduced margins over time for our products. Our system may be rendered obsolete or uneconomical by technological advances developed by one or more of our competitors.

**Third-Party Reimbursement**

Payment for patient care in the United States is generally made by third-party payors. These payors include private insurers and government insurance programs, such as Medicare or Medicaid. The Medicare program, the largest single payor in the United States, is a federal health benefit program administered by the Centers for Medicare and Medicaid Services, or CMS, and covers certain medical care items and services for eligible elderly, blind, and disabled individuals. The coverage under Part A of the Medicare program includes hospital and other

institutional services, while Part B of Medicare includes doctors' services. Because Medicare beneficiaries comprise a large percentage of the populations for which our system is used, and private insurers may follow the coverage and payment policies for Medicare, Medicare's coverage and payment policies are significant to our operation.

The original fee-for-service portion of the Medicare Part A program pays hospitals for inpatient services under a prospective payment system, which provides for a pre-determined payment amount based on a patient's discharge diagnosis. Discharge diagnoses are grouped into Diagnosis Related Groups, or DRGs, which determine the payment amount for the inpatient hospital services. The payment amount is intended to reflect the costs of admitting and treating the patient. These payment amounts differ for each inpatient discharge. Currently, hospitals do not receive any additional payments from the fee-for-service Medicare program for the cost of inpatient treatment of AF as part of an open-heart procedure. In these cases, the use of an ablation device to provide the AF treatment is included in the payment for the open-heart procedure. Sole-therapy minimally invasive AF treatment also qualifies for payment from the fee-for-service Medicare Part A program, which allows the hospital to receive payment for this type of AF treatment. The Medicare program has adopted specific hospital inpatient treatment codes describing AF treatment by ablation in sole-therapy and open-heart procedures such as those provided through the use of the AtriCure bipolar ablation system. However, the existing Medicare inpatient coverage, coding or payment polices are subject to change by CMS. As a result, the continuance of current coverage, coding or payment determinations cannot be guaranteed, and any change may have an adverse impact on our operations.

Doctors are reimbursed for their services separately under the Medicare Part B physician fee schedule. Doctors performing AF treatment during an open-heart procedure receive a payment that reflects several factors, including the time and complexity of the AF treatment. Doctors who perform a sole-therapy minimally invasive procedure receive payment that is comparable to the reimbursement paid to doctors for performing an open-heart surgical procedure.

Claims for procedures using our system are typically submitted by the doctor to Medicare Part B carriers (typically insurance companies under contract to CMS) or other health insurers using established billing codes, including the Current Procedural Terminology, or CPT, billing codes maintained by the American Medical Association. The billing codes identify the procedure or procedures performed and are relied upon to determine third-party payor amounts. Existing CPT billing codes describe surgical cardiac ablation procedures. Market acceptance of our products is dependent on coverage and adequate payment levels from such payors.

Currently, we believe that the AF treatment reimbursement rates are adequate for doctors and hospitals to cover the use of our system for the treatment of AF. In 2004, the national Medicare payment rate for an open-heart procedure, whether or not the AF treatment is included, was approximately $24,000 to $45,000, depending on the type of open-heart procedure being performed, the geographic region and the type of facility. National medical hospital rates for AF treatment performed as a sole-therapy minimally invasive treatment were also approximately $24,000 to $45,000, depending on the geographic region and type of facility. The cost of AF treatment performed during open-heart surgical procedures is not reimbursed separately by the Medicare program and the reimbursement rules for open-heart surgical procedures include supplies, including the use of an ablation device, but exclude doctor's fees for these procedures, which payors remit to doctors in addition to the amounts paid to hospitals for AF treatment procedures. Payment rates of other third-party payors may be the same as or higher or lower than Medicare rates, depending on their particular reimbursement methodology.

In addition to the Medicare program, many private payors look to CMS policies as a guideline in setting their coverage policies and payment amounts. The current coverage policies of these private payors may differ from the Medicare program, and the payment rates they make may be higher, lower, or the same as the Medicare program. If CMS or other agencies decrease or limit reimbursement payments for doctors and hospitals, this may affect coverage and reimbursement determinations by many private payors. Additionally, some private payors do not follow the Medicare guidelines, and those payors may reimburse only a portion of the cost of AF treatment, or not at all.

The AtriCure bipolar ablation system has received FDA clearance for the ablation and coagulation of soft tissues during certain non-cardiac-related surgical procedures. However, because the FDA does not regulate the practice of medicine, doctors may use the AtriCure bipolar ablation system in other circumstances where they deem it medically appropriate, even though the FDA has not approved or cleared our system for that indication. In these circumstances, some government or private payors, including some Medicare carriers, may make coverage and payment determinations on a case-by-case basis. Additionally, some government or private payors may deem the treatment of AF using the AtriCure bipolar ablation system for indications not approved or cleared by the FDA to be experimental or not medically necessary and, as such, may not provide coverage or payment.

**Acquisition of Enable Medical Corporation**

Contemporaneously with the closing of this offering, we anticipate acquiring Enable Medical Corporation, the manufacturer of our Isolator handpieces, which are an essential component of the AtriCure bipolar ablation system. We believe that our acquisition of Enable will provide us with better control over research, development and manufacturing activities and improve our margins, especially as we intend to expand the types and quantities of our products manufactured and sold.

Enable has two business units, Enable Surgical Products and Enable Design and Manufacturing. The Surgical Products unit is engaged in the research and development of radio-frequency energy-based surgical products. The Surgical Products unit is currently distributing a line of bipolar scissors in the United States, Europe, and Asia and has a portfolio of radio-frequency technologies covered by U.S. and European patents that are being considered for licensing or commercialization by Enable. The Design and Manufacturing unit provides contract design, research and development and manufacturing services to us and other medical device companies. Enable has offices and production and warehouse space in West Chester, Ohio, near the location of our headquarters, and had 51 employees as of May 31, 2005. For the year ended December 31, 2004, Enable had total revenues of $6.9 million and net income of $0.8 million.

We have entered into a merger agreement with Enable and made an initial payment of $0.5 million, which is non-refundable unless the agreement is terminated due to a breach or a failure by Enable. Under the terms of this agreement, if the closing occurs on or before July 1, 2005, the purchase price will be an additional $6 million, or an additional $6.5 million if the closing occurs after July 1, 2005 but prior to December 31, 2005, when the agreement expires. In accordance with the terms of this agreement, Enable paid a cash dividend of $0.5 million to its shareholders on January 31, 2005 and, immediately prior to the closing of our acquisition, Enable is entitled to make a cash dividend to its shareholders of up to $0.5 million, subject to satisfaction of certain financial conditions. If prior to the closing of this offering, Enable sells certain of its assets unrelated to the AtriCure bipolar ablation system, we will receive 50% of the proceeds from that sale, assuming that our acquisition of Enable closes. If, instead, we sell those assets after the closing of the acquisition but prior to its third anniversary, we will be required to pay the former shareholders of Enable 50% of the consideration we receive from that sale in excess of $1 million, subject to a maximum payment to the Enable shareholders of $2 million.

Three of the members of our board of directors, directly or indirectly, hold an aggregate of approximately 63% of the outstanding common stock of Enable and, accordingly, will receive a majority of the amounts that we pay to acquire Enable. None of these persons individually holds a majority of the outstanding common stock of Enable, nor are we aware that these persons are acting collectively as a group. One of these three directors, Michael Hooven, our Chief Technology Officer, is also a director and an officer of Enable. The purchase price for Enable was determined by negotiations between special committees of disinterested directors of Enable and us but no opinion as to fairness of terms was obtained from an investment banking firm.

**Government Regulation**

The AtriCure bipolar ablation system is a medical device subject to regulation by the FDA, as well as other federal and state regulatory bodies in the United States and comparable authorities in other countries. We currently market our system in the United States under a 510(k) clearance for the ablation and coagulation of soft

tissues during general, ear, nose and throat, thoracic, gynecologic and urologic surgical procedures. Currently, our system may not be marketed for ablation of cardiac tissue or for the treatment of AF without obtaining additional clearances and approvals from the FDA. In December 2004, we submitted a 510(k) notification for our system to expand its indications for use to include cardiac tissue ablation. This submission is currently under review by the FDA and we cannot assure you that we will obtain this clearance.

The FDA requires that premarket approval be obtained for a device before it can be marketed for the treatment of AF. A PMA will require clinical data supporting the safe and effective use of the device in the treatment of AF. In December 2003, we received an IDE from the FDA to conduct clinical trials of our system in a prospective, multi-center trial, known as the RESTORE-SR trial, to evaluate the safety and efficacy of our system for the treatment of AF during open-heart surgery. In addition, in January 2005, we filed with the FDA for an IDE to conduct a clinical trial to demonstrate the feasibility of using the AtriCure bipolar system for the sole-therapy minimally invasive treatment of AF that also includes removal of a portion of the heart called the left atrial appendage. If this feasibility trial is permitted to proceed and is successful, we would need to conduct a pivotal trial to support marketing authorization. We cannot assure you that we will successfully complete the current RESTORE-SR trial, receive approval for any additional clinical trials or submit and obtain approval for our system for use in treating AF.

Our Wolf Dissector is also a medical device subject to regulation by the FDA, as well as other federal and state regulatory bodies in the United States and comparable authorities in other countries. We currently market this product in the United States under a 510(k) clearance for use in the dissection of soft tissues during general, ear, nose and throat, thoracic, urological and gynecological surgical procedures. We are not currently seeking any further approvals or clearances from the FDA relating to this device.

FDA regulations govern nearly all of the activities that we perform, or that are performed on our behalf, to ensure that medical products distributed domestically or exported internationally are safe and effective for their intended uses. The activities that FDA regulates include the following:

- product design, development and manufacture;
- product safety, testing, labeling and storage;
- pre-clinical testing in animals and in the laboratory;
- clinical investigations in humans;
- premarketing clearance or approval;
- record keeping and document retention procedures;
- advertising and promotion;
- product marketing, sales and distribution;
- post-marketing surveillance and medical device reporting, including reporting of deaths, serious injuries, device malfunctions or other adverse events; and
- corrective actions, removals and recalls.

***FDA's Premarket Clearance and Approval Requirements.*** Unless an exemption applies, each medical device distributed commercially in the United States will require either prior 510(k) clearance or a PMA from the FDA. Medical devices are classified into one of three classes—Class I, Class II, or Class III—depending on the degree of risk associated with each medical device. Devices deemed to pose lower risks are placed in either Class I or II, which requires the manufacturer to submit to the FDA a 510(k) notification requesting clearance to commercially distribute the device. Some low risk devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) device, or predicate device, are placed in Class III, requiring submission of a PMA supported by clinical trial data. The FDA has previously classified the

AtriCure bipolar ablation system as a Class II device and has granted us 510(k) clearance to market this product for the ablation and coagulation of soft tissues during certain surgical procedures. However, to market our system for the treatment of AF, the FDA requires that we seek approval through submission to the FDA of a PMA, a much more demanding process than the 510(k) notification process. Both 510(k)s and PMAs must now be submitted with a potentially substantial user fee payment to the FDA, although certain exemptions and waivers can apply, including certain exemptions and waivers for small businesses.

***510(k) Clearance Pathway***. When 510(k) clearance is required, we must submit a notification to the FDA demonstrating that our proposed device is substantially equivalent to a predicate device, previously cleared and legally marketed 510(k) device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of a PMA. The FDA is required to respond to a 510(k) notification within 90 days of submission, but the response may be a request for additional information or data, including clinic al data. As a practical matter, 510(k) clearance often takes significantly longer than 90 days, and may take up to one year or more. If the FDA determines that the device, or its intended use, is not substantially equivalent to a previously-cleared device or use, the device is automatically placed into Class III, requiring the submission of a PMA. Any modification to a 510(k)-cleared device that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, in connection with safety and effectiveness, approval of a PMA. The FDA requires every manufacturer to make the determination regarding a new 510(k) submission in the first instance, but the FDA may review any manufacturer's decision. We have made modifications to elements of our system, but we do not believe that such modifications will require us to seek additional 510(k) clearance. The FDA may not agree with our decisions regarding whether new 510(k) clearances are required. If the FDA disagrees with us and requires us to submit a new 510(k) or PMA, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval. In addition, we could be subject to significant regulatory fines or penalties. Furthermore, our products could be subject to recall if the FDA determines, for any reason, that our products are not safe or effective. Delays in receipt or failure to receive clearances or approvals, the loss of previously received clearances or approvals, or the failure to comply with existing or future regulatory requirements could reduce our sales, profitability and future growth prospects.

***Premarket Approval Pathway.*** A PMA must be submitted to the FDA if the device cannot be cleared through the 510(k) process. The PMA process is much more demanding than the 510(k) notification process. A PMA must be supported by extensive data, including but not limited to technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to the FDA's satisfaction the safety and effectiveness of the device.

After a PMA is submitted and the FDA has determined that the application is sufficiently complete to permit a substantive review, the FDA will accept the application for filing. The FDA has 180 days to review an "accepted" PMA, although the review of an application generally occurs over a significantly longer period of time and can take up to several years. During this review period, the FDA may request additional information or clarification of the information already provided. Also, an advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. In addition, the FDA will conduct a preapproval inspection of the manufacturing facility to ensure compliance with quality system regulations. New PMAs or PMA supplements are required for significant modification to the device, including indicated use, manufacturing process, labeling and design of a device that is approved through the premarket approval process. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA and may not require as extensive clinical data or the convening of an advisory panel.

***Clinical Trials.*** Clinical trials are generally required to support a PMA and are sometimes required for 510(k) clearance. In the United States, clinical trials for a significant risk device require the prior submission of an application for an IDE to the FDA for approval. An IDE amendment must also be submitted before initiating a new clinical study under an existing IDE, such as initiating a pivotal trial following the conclusion of a feasibility trial. The IDE application must be supported by appropriate data, such as animal and laboratory testing results,

and any available data on human clinical experience, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The animal and laboratory testing must meet the FDA's good laboratory practice requirements.

The IDE and any IDE supplement for a new trial must be approved in advance by the FDA for a specific number of patients. Clinical trials for significant risk devices may not begin until the IDE application or IDE supplement is approved by the FDA and the appropriate institutional review boards, or IRBs, overseeing the welfare of the research subjects and responsible for that particular clinical trial. If the product is considered a non-significant risk device under FDA regulations, only the patients' informed consent and IRB approval are required. Under its regulations, the agency responds to an IDE or an IDE amendment for a new trial within 30 days. The FDA may approve the IDE or amendment, grant an approval with certain conditions, or identify deficiencies and request additional information. It is common for the FDA to require additional information before approving an IDE or amendment for a new trial, and thus final FDA approval on a submission may extend beyond the initial 30 days. The FDA may also require that a small-scale feasibility study be conducted before a pivotal trial may commence. In a feasibility trial, the FDA limits the number of patients, sites and investigators that may participate. Feasibility trials are typically structured to obtain information on safety and to help determine how large a pivotal trial should be to obtain statistically significant results.

Clinical trials are subject to extensive recordkeeping and reporting requirements. Our clinical trials must be conducted under the oversight of an IRB for the relevant clinical trial sites and must comply with FDA regulations, including but not limited to those relating to good clinical practices. We are also required to obtain the patients' informed consent in form and substance that complies with both FDA requirements and state and federal privacy and human subject protection regulations. We, the FDA or the IRB may suspend a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. Even if a trial is completed, the results of clinical testing may not adequately demonstrate the safety and efficacy of the device or may otherwise not be sufficient to obtain FDA approval to market the product in the United States. Similarly, in Europe the clinical study must be approved by a local ethics committee and in some cases, including studies with high-risk devices, by the ministry of health in the applicable country.

***Educational Grants.*** The FDA permits a device manufacturer to provide financial support, including support by way of grants, to third-parties for the purpose of conducting medical educational activities. If these funded activities are considered by the FDA to be independent of the manufacturer, then the activities fall outside the restrictions on off-label promotion to which the manufacturer is subject.

The FDA considers several factors in determining whether an educational event or activity is independent from the substantive influence of the device manufacturer and therefore nonpromotional, including the following:

- whether the intent of the funded activity is to present clearly defined educational content, free from commercial influence or bias;
- whether the third-party grant recipient and not the manufacturer has maintained control over selecting the faculty, speakers, audience, activity content and materials;
- whether the program focuses on a single product of the manufacturer without a discussion of other relevant existing treatment options;
- whether there was meaningful disclosure to the audience, at the time of the program, regarding the manufacturer's funding of the program, any significant relationships between the provider, presenters, or speakers and the supporting manufacturer, and whether any unapproved uses will be discussed; and
- whether there are legal, business, or other relationships between the supporting manufacturer and the provider or its employees that could permit the supporting manufacturer to exert influence over the content of the program.

We believe that the activities we support pursuant to our educational grants program are in accordance with these criteria for independent educational activities.

***Pervasive and Continuing Regulation***. There are numerous regulatory requirements governing the approval and marketing of a product. These include:

- FDA's QSR, which requires manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label use or indication;
- clearance or approval of product modifications that could significantly affect safety or efficacy or that would constitute a major change in intended use;
- medical device reporting, or MDR, regulations, which require that manufacturers comply with reporting requirements of the FDA and report if their device may have caused or contributed to an adverse event, a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur;
- post-approval restrictions or conditions, including post-approval study commitments;
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device; and
- notices of correction or removal and recall regulations.

MDR regulations require that we report to the FDA any incident in which our product may have caused or contributed to an adverse event, a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury. As of May 31, 2005, we have notified the FDA of eight reports of complications during procedures utilizing our products. On April 19, 2004, we reported to the FDA a complication during a procedure using our first generation dissection tool, the PVI-7, which complication included a small disruption to the pulmonary vein and required conversion from a thoracotomy to a sternotomy. No long-term damage to the patient was reported. We no longer manufacture or sell this dissector tool. The remaining seven MDRs relate to our Isolator handpieces. On October 13, 2004, we reported an incident involving a 1-mm perforation during ablation using our system during an aortic valve replacement surgery. The perforation was repaired with one suture with no clinical consequence reported. On December 17, 2004, we reported an incident involving a malfunction of our system described as "lining of forceps broke during clamping" that resulted in no clinical consequence reported. On January 3, 2005, we notified the FDA of a broken insulator cap on the tip of an Isolator handpiece. No clinical consequence was reported as a result of the break. On January 15, 2005, we reported a complication during a procedure using our system where the tip of an Isolator handpiece lacerated a patient's left ventricle. The laceration was surgically repaired and there was no clinical consequence reported. On January 17, 2005, we reported a complication during a procedure using our system, wherein the jaw of an Isolator handpiece perforated a patient's pulmonary artery. The pulmonary artery was surgically repaired and there was no clinical consequence reported. On February 3, 2005, we reported a complication during a procedure using our system where there was a perforation of a patient's left atrial cuff. The left atrial cuff was surgically repaired and there was no clinical consequence reported. On March 8, 2005, we reported a complication during a procedure using our system where bleeding occurred in the patient's right pulmonary artery. Surgical intervention was required to control the bleeding and there was no clinical consequence reported.

Advertising and promotion of medical devices are also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. Recently, some promotional activities for FDA-regulated products have been the subject of enforcement action brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims.

We have registered with the FDA as a medical device manufacturer. The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of our suppliers.

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

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

***Fraud and Abuse and False Claims.*** We are directly and indirectly subject to various federal and state laws governing our relationship with healthcare providers and pertaining to healthcare fraud and abuse, including anti-kickback laws. In particular, the federal healthcare program Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for or recommending a good or service, for which payment may be made in whole or part under federal healthcare programs, such as the Medicare and Medicaid programs. Penalties for violations include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. In implementing the statute, the Office of Inspector General of the U.S. Department of Health and Services, or OIG, has issued a series of regulations, known as the “safe harbors.” These safe harbors set forth provisions that, if all their applicable requirements are met, will assure healthcare providers and other parties that they will not be prosecuted under the Anti-Kickback Statute. The failure of a transaction or arrangement to fit precisely within one or more safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy each applicable element of a safe harbor may result in increased scrutiny by government enforcement authorities, such as the OIG.

The Federal False Claims Act imposes civil liability on any person or entity who submits, or causes the submission of a false or fraudulent claim to the United States Government. Damages under the Federal False Claims Act can be significant and consist of the imposition of fines and penalties. The Federal False Claims Act also allows a private individual or entity with knowledge of past or present fraud on the federal government to sue on behalf of the government to recover the civil penalties and treble damages. The U.S. Department of Justice on behalf of the government has successfully enforced the Federal False Claims Act against pharmaceutical manufacturers. The federal suit has alleged that pharmaceutical manufacturers whose marketing and promotional practices were found to have included the off-label promotion of drugs or the payment of prohibited kickbacks to doctors violated the FCA on the grounds that these prohibited activities resulted in the submission of claims to federal and state healthcare entitlement programs such as Medicaid, resulting in the payment of claims by Medicaid for the off-label use of the drug which was not a use of the drug otherwise covered by Medicaid. Such manufacturers have entered into settlements with the federal government under which they paid amounts and entered into corporate integrity agreements that require, among other things, substantial reporting and remedial actions.

The Federal authorities, and state equivalents, may likewise seek to enforce the False Claims Act against medical device manufacturers. We believe that our marketing practices are not in violation of the Federal False

Claims Act or state equivalents, but we cannot assure you that the federal authorities will not take action against us and, if such action were successful, we could be required to pay significant fines and penalties and change our marketing practices. Such enforcement could have a significant adverse effect on our ability to operate.

We engage in a variety of activities that are subject to these laws and that have come under particular scrutiny in recent years by federal and state regulators and law enforcement entities. These activities have included, consulting arrangements with cardiothoracic surgeons, grants for training and other education, grants for research, and other interactions with doctors.

AdvaMed is one of the primary United States trade associations for medical device manufacturers. This association has established guidelines and protocols for medical device manufacturers in their relationships with healthcare professionals on matters including research and development, product training and education, grants and charitable contributions, support of third-party educational conferences, and consulting arrangements. Adoption of the AdvaMed Code by a medical device manufacturer is voluntary, and while the OIG and other federal and state healthcare regulatory agencies encourage its adoption and may look to the AdvaMed Code, they do not view adoption of the AdvaMed Code as proof of compliance with regulatory matters.

We have adopted the AdvaMed Code and incorporated its principles in our standard operating procedures, sales force training programs, and relationships with doctors. Key to the underlying principles of the AdvaMed Code is the need to focus the relationships between manufacturers and healthcare professionals on matters of training, education and scientific research, and limit payments between manufacturers and healthcare professionals to payment of fair market value for legitimate services provided and payment of modest meal, travel and other expenses for a healthcare professional under limited circumstances. We have incorporated these principles into our relationships with healthcare professionals under our consulting agreements, payment of travel and lodging expenses, grant making procedures and sponsorship of third-party conferences. In addition, we have conducted training sessions on these principles.

***Regulation Outside of the United States***. Sales of medical devices outside of the United States are subject to foreign governmental regulations, which vary substantially from country to country. The time required to obtain certification or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval, and the requirements may be different.

The primary regulatory body in Europe is that of the European Union, which has adopted numerous directives and has promulgated voluntary standards regulating the design, manufacture and labeling of and clinical trials and adverse event reporting for medical devices. Devices that comply with the requirements of a relevant directive will be entitled to bear CE conformity marking, indicating that the device conforms with the essential requirements of the applicable directives and, accordingly, can be commercially distributed throughout the member states of the European Union, and other countries that comply with or mirror these directives. The method for assessing conformity varies depending on the type and class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a notified body, an independent and neutral institution appointed by a country to conduct the conformity assessment. This third-party assessment may consist of an audit of the manufacturer’s quality system and specific testing of the manufacturer’s device. Such an assessment is required for a manufacturer to commercially distribute the product throughout these countries. International Standards Organization, or ISO, 9001 and ISO 13845 certifications are voluntary standards. Compliance establishes the presumption of conformity with the essential requirements for a CE Marking. We have the authorization to affix the CE Mark to our system and to commercialize our system in the European Union for the ablation and coagulation of soft tissues during general, ear nose and throat, thoracic, gynecologic and urologic surgical procedures.

**Intellectual Property**

Protection of our intellectual property is a strategic priority for our business, and we rely on a combination of patent, copyright, trademark and trade secret laws to protect our interests. Our ability to protect and use our intellectual property rights in the continued development and commercialization of our technologies and

products, operate without infringing the proprietary rights of others, and prevent others from infringing our proprietary rights is crucial to our continued success. We will be able to protect our products and technologies from unauthorized use by third parties only to the extent that they are covered by valid and enforceable patents, trademarks or copyrights or are effectively maintained as trade secrets, know-how or other proprietary information.

We seek patent protection relating to our system and other important technologies we develop in both the United States and in selected foreign countries. While we own much of our intellectual property, including patents, patent applications, trademarks, trade secrets, know-how and proprietary information, we also license related technology of importance to commercialization of our products. For example, to continue developing and commercializing our current and future products, we may license intellectual property from commercial or academic entities to obtain the rights to technology that is required for our research, development and commercialization activities.

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

We devote significant resources to obtaining patents and other intellectual property and protecting our other proprietary information. We have already obtained patents or filed patent applications on a number of our technologies, including patents and patent applications relating to our bipolar ablation system and ancillary devices. If valid and enforceable, these patents may give us a means of blocking competitors from using infringing technology to compete directly with our products. We also have certain proprietary trade secrets that may not be patentable or for which we have chosen to maintain secrecy rather than file for patent protection. With respect to proprietary know-how that is not patentable, we have chosen to rely on trade secret protection and confidentiality agreements to protect our interests. As of May 31, 2005 we had four issued United States patents that will expire on December 22, 2020 and one issued United States patent that will expire on May 4, 2021.

As of May 31, 2005, we had the following portfolio of 40 issued patents or patent applications covering our proprietary technologies and products:

- 5 issued United States patents;
- 23 United States non-provisional patent applications;
- 1 United States provisional patent applications;
- 6 pending foreign patent applications that are in various national stages of prosecution; and
- 5 pending foreign applications filed pursuant to the Patent Cooperation Treaty, or PCT, not at the national stage.

**Manufacturing**

Upon our anticipated acquisition of Enable contemporaneously with the closing of this offering, we will manufacture the majority of the components that comprise the AtriCure bipolar ablation system. Some of the components of our system, including our ASU, will still come from outside suppliers. We inspect, assemble, test and package our products in West Chester, Ohio and our products are sterilized by outside sterilization facilities.

Purchased components for our system are generally available from more than one supplier, with the exception of our ASU. Our ASU is a critical component of the AtriCure bipolar ablation system, and there are

relatively few alternative sources of supply available. We do not carry a significant inventory of this component and obtaining a replacement supplier for the ASU, if required, may not be accomplished quickly or at all and could involve significant additional costs. With the exception of Enable and Stellartech Research Corporation, the supplier of our ASU, our suppliers have no contractual obligations to supply us with, and we are not contractually obligated to purchase from them, any of our supplies.

We are currently purchasing our Isolator handpieces from Enable pursuant to a master development, manufacturing and supply agreement. See "Certain Relationships and Related Party Transactions—Enable Medical Corporation."

In December 2003, we entered into a two-year development agreement with Stellartech whereby Stellartech agreed to develop enhancements to the current ASU technology and granted us a royalty-free license to use Stellartech's technology in the field of cardiac arrhythmia treatment. We may terminate this agreement upon 30 days' notice. Under the terms of this agreement, we and Stellartech have certain indemnification obligations, including respect to claims relating to intellectual property infringement or misappropriation. In December 2003, we also entered into a manufacturing agreement with Stellartech whereby we agreed to purchase, and Stellartech agreed to supply, specified minimum quantities of our ASU. This agreement has an initial five-year term and renews for successive one-year periods, unless terminated. This manufacturing agreement may be terminated by Stellartech for any reason upon six months' notice to AtriCure. We may terminate the agreement in the event the development agreement is terminated prior to expiration or after we have fulfilled certain purchase requirements under the agreement. Any supply interruption or failure to obtain our ASU would limit our ability to sell our system and could have a material adverse effect on our business, financial condition and results of operations.

Order quantities and lead times for components purchased from outside suppliers are based on our forecasts derived from historical demand and anticipated future demand. Lead times may vary significantly depending on the size of the order, time required to fabricate and test the components, specific supplier requirements and current market demand for the components and subassemblies. To date, we have not experienced significant delays in obtaining any of our components. There are no unique or proprietary processes required in manufacturing our components. We are under no contractual obligations that preclude us from developing products or sourcing components from new suppliers.

We and our component suppliers are required to manufacture our products in compliance with the FDA's QSR. The QSR regulates extensively the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic inspections that may be announced or unannounced and may include the manufacturing facilities of our subcontractors. Our failure or the failure of our component suppliers to maintain compliance with the QSR requirements could result in the shutdown of our manufacturing operations or the recall of our products, which would have a material adverse effect on our business. In the event that one of our suppliers fails to maintain compliance with our quality requirements, we may have to qualify a new supplier and could experience manufacturing delays as a result. We also could be subject to injunctions, product seizures, or civil or criminal penalties.

We regularly audit our suppliers for compliance with QSR, and applicable ISO standards. We have been an FDA-registered medical device manufacturer since November 2002. We obtained our CE Mark in June of 2002, and our quality systems and facility practices are certified to ISO 13485:2003; MDD 93/42/EEC, or CE Mark; and CMDCAS, or Canadian regulations. We believe that we are currently in good standing with the FDA and are subject to pre-announced inspections. Our current quality system is developed to comply with QSR and ISO standards. Enable has advised us that it is in full compliance with ISO 9001:1994, and ISO 13485:2003. Enable has undergone two full quality system audits and six surveillance audits by TUV America, Inc. Enable's most recent audit was in December 2004 and was a full quality system audit. There were no major non-conformance issues and Enable has advised us that it is in substantial compliance with ISO 13485:2003.

We were inspected by the FDA in February 2003 as part of a not-for-cause, general QSR inspection. The FDA made no observations requiring our response. There were no findings that involved a material violation of regulatory requirements. Enable was inspected by the FDA in June 2000 as part of a not-for-cause, general QSR inspection. The FDA made five observations that did not require any response, but Enable provided the FDA with a response of corrective action. In December 2004, Stellartech, the manufacturer of our ASU, was inspected by the FDA as part of a not-for-cause, general QSR inspection. The FDA issued a notice with three observations requiring responses. Stellartech has addressed those observations and recently sent their responses to the FDA.

Enable has been registered with the Ohio Environmental Protection Agency, or Ohio EPA, as a small waste generator since 2001. The Ohio EPA audited Enable in March 2001 and made four observations. Enable performed corrective action and the Ohio EPA found all corrective actions taken to be effective.

We are subject to numerous federal, state and local laws relating to such matters as laboratory practices, the experimental use of animals, the use and disposal of hazardous or potentially hazardous substances, controlled drug substances, safe working conditions, manufacturing practices, environmental protection and fire hazard control. We may incur significant costs to comply with those laws and regulations now or in the future, but we do not expect that such compliance will have a material impact on our business.

We are currently increasing our manufacturing capabilities as we increase commercialization efforts. Manufacturers can experience difficulties in significantly scaling up production capacities, which may include problems with capacity, production yields and quality control. If we are unable to manufacture our products to keep up with demand, we will not meet expectations for growth of our business.

**Research and Development**

Our research and development group develops product enhancements and new products to address unmet procedural and market needs with the goal of increasing revenue. The major focus of the group is to explore new products and technologies to expand options for the treatment of AF and stroke prevention during open-heart surgical procedures and as a sole-therapy minimally invasive treatment. Additionally, we are exploring new products for patients who have no history of AF, are undergoing open-heart surgery and may be predisposed for developing AF, including patients at risk of developing post-operative AF, a temporary complication associated with cardiac surgery. Our research and development expenses were approximately $4.4 million in 2004, $2.5 million in 2003 and $2.7 million in 2002.

**Consulting Relationships**

We have developed consulting relationships with a number of leading scientists and doctors to give our research and development team additional technical and creative breadth. We work closely with these thought leaders to understand unmet needs and emerging applications in the treatment of AF. We typically enter into a written agreement with the consultant pursuant to which the consultant is obligated to provide services such as advising us as to the design and development of our products and procedures, educating doctors on the FDA-approved use of our technologies, conducting clinical trials and providing supporting data for clinical trials and providing advice concerning grants and regulatory submissions. Payment of compensation, in both cash and stock, is made, in part, upon determination by us that services have been provided to our satisfaction. Upon presentation of appropriate documentation, reasonable travel and other expenses are also reimbursed. We do not expect or require the consultant to utilize or promote our products, and consultants are required to disclose their relationship with us as appropriate, such as when publishing an article in which our system is discussed. See “Risk Factors—Risks Relating to Our Business—We may be subject to fines, penalties, injunctions and other sanctions if we are deemed to be promoting the use of our product for non-FDA-approved, or off-label, uses.”

**Employees**

As of May 31, 2005, we had 71 full-time employees, including 23 in research and development, regulatory and clinical affairs, 31 in sales and marketing, and 17 in administration. In addition, Enable had 51 full-time employees as of that date, including 14 in research and development and regulatory and clinical affairs, one in sales and marketing, and four in administration. None of the employees is represented by a labor union or is covered by a collective bargaining agreement. We have never experienced any employment-related work stoppages and consider our employee relations to be good. We also employ independent contractors to support our development, regulatory, sales, marketing and administrative activities.

**Facilities**

We maintain our headquarters in West Chester, Ohio in a facility of approximately 12,200 square feet, which contains both office and warehouse space. We currently pay monthly rent of approximately $10,000 and the lease for this facility expires in May 2009. In addition, Enable leases approximately 17,500 square feet of office and production space and 5,800 square feet of warehouse space in West Chester, Ohio, pursuant to three separate leases with an aggregate monthly rent of approximately $15,000 and each lease for these facilities will expire in 2010. We believe that our existing facilities are adequate to meet our immediate needs and that suitable additional space will be available in the future on commercially reasonable terms as needed.

**Legal Proceedings**

We are not party to any pending or threatened litigation. We may from time to time become a party to legal proceedings arising in the ordinary course of business.

## MANAGEMENT

### Executive Officers and Directors

Set forth below is the name, age, position and a brief account of the business experience of each of our executive officers and directors as of May 31, 2005.

| Name | Age | Position(s) |
|---|---|---|
| Richard M. Johnston(1)(2) | 70 | *Chairman of the Board* |
| David J. Drachman | 46 | *President, Chief Executive Officer and Director* |
| Michael D. Hooven | 49 | *Chief Technology Officer and Director* |
| Thomas Etergino | 38 | *Vice President and Chief Financial Officer* |
| Frederick Preiss | 54 | *Vice President; Operations* |
| Salvatore Privitera | 38 | *Vice President; Product Development* |
| Elsa Chi Abruzzo | 37 | *Vice President; Regulatory and Clinical Affairs* |
| James L. Lucky | 43 | *Vice President; Quality Assurance and Healthcare Compliance* |
| Richard S. Walsh | 41 | *Vice President; Sales* |
| Donald C. Harrison, M.D.(1)(2) | 71 | *Director* |
| Alan L. Kaganov(3) | 66 | *Director* |
| Karen P. Robards(1)(2) | 55 | *Director* |
| Norman R. Weldon, Ph.D.(2)(3) | 70 | *Director* |
| Lee R. Wrubel, M.D.(3) | 41 | *Director* |

(1) Member of audit committee
(2) Member of nominating and corporate governance committee
(3) Member of compensation committee

*Richard M. Johnston* has served as one of our directors since June 2002 and as Chairman of the Board since February 2005. Since 2000, Mr. Johnston has been a managing member of Camden Partners Holdings, LLC, a private equity firm that holds approximately 11.7% of our common shares prior to this offering. Mr. Johnston currently serves as a director of several of Camden Partners' portfolio companies, including Lombard Medical Technologies plc, COHR, Inc., Medivance, Inc., Pharmanetics, Inc., and Webmedx, Inc. From 1961 to 2000, Mr. Johnston was employed by The Hillman Company, an investment holding company with diversified operations, where he served from 1970 to 2000 as Vice President, Investments and as a director. From 1979 to 2003, Mr. Johnston was Chairman of the Board of The Western Pennsylvania Hospital, and its successors, The Western Pennsylvania Healthcare System and West Penn Allegheny Health System. Mr. Johnston received his B.S. from Washington and Lee University and his M.B.A. from The Wharton School, University of Pennsylvania.

*David J. Drachman* has served as President, Chief Executive Officer and a director since October 2002. From 2000 to 2002, Mr. Drachman served as President of Impulse Dynamics N.V., a development stage medical device company focusing on implantable electrical solutions for the treatment of heart failure, diabetes and eating disorders. From 1997 to 1999, Mr. Drachman served in a variety of positions, including Vice President of Strategic Development at Biosense Webster, Inc., a Johnson & Johnson, Inc. subsidiary that designs and manufactures diagnostic and therapeutic cardiac catheters. Mr. Drachman received his B.A. from the University of Louisville and holds North American Society of Pacing and Electrophysiology certifications in Electrophysiology, Cardiac Pacing and Defibrillation.

*Michael D. Hooven* is one of our founders and has served as Chief Technology Officer and a director since August 2002 and as Chairman of the Board from August 2002 through February 2005. From November 2000 to August 2002, he served as our President and Chief Executive Officer. Since 1994, Mr. Hooven has served as Chairman of the Board, and has previously served as President and Chief Executive Officer of Enable, a developer and manufacturer of surgical instruments that Mr. Hooven co-founded and that we anticipate acquiring

contemporaneously with the closing of this offering. Mr. Hooven is also a director of Omeris, Inc., a not-for-profit company devoted to building and accelerating the bioscience industry, research and education and is a member of the advisory board of EnteraTech, Inc., a privately-held life sciences company. From 1986 to 1994, Mr. Hooven served as Director of New Product Development at Ethicon Endo-Surgery, Inc., a developer and manufacturer of minimally invasive surgical instruments. Mr. Hooven received his B.S. and M.S. from the University of Michigan.

*Thomas Etergino*, CPA has served as our Vice President and Chief Financial Officer since May 2005. From 2003 to 2005, Mr. Etergino served as Chief Financial Officer of LSSi, Corp., a database developer. From 1998 to 2003, Mr. Etergino served in a variety of positions within DoubleClick Inc., including Chief Accounting Officer, Treasurer and Senior Vice President of Finance. Prior thereto, Mr. Etergino worked in Corporate Finance for Time Warner and spent eight years as an auditor at Coopers & Lybrand. Mr. Etergino received his B.S. from Washington & Lee University.

*Frederick Preiss* has served as our Vice President; Operations since May 2005. From 2002 to 2005, Mr. Preiss served as Vice President of Operations, OEM of Teleflex Medical, a medical device manufacturer and subsidiary of Teleflex, Inc., a publicly-held designer and manufacturer of specialty engineered devices for various industries. From 1998 to 2002, Mr. Preiss served as Vice President of Operations of Regeneration Technologies, a tissue-based biotechnology company. Prior thereto, from 1971 to 1998, Mr. Preiss held a number of responsible positions relating to operations, manufacturing, engineering and purchasing at various companies, including Wright Medical Technology, United States Surgical Corporation and Cyromedics Inc. Mr. Preiss received his B.S. from the University of New Haven.

*Salvatore Privitera* has served as our Vice President; Product Development since October 2003, and previously served in the same capacity from 2000 to 2001. From 2001 to 2003, Mr. Privitera served as Director of Product Development for Ethicon Endo-Surgery, a developer and manufacturer of minimally invasive surgical instruments. Mr. Privitera has 15 years of medical product development experience and has been associated with the release of over 30 medical devices in the fields of cardiac surgery, laparoscopic general surgery, breast biopsy, and sedation. He is a named inventor on over 20 issued and filed U.S. patents. Mr. Privitera received his B.S. from University of Buffalo and his M.B.A. from Xavier University.

*Elsa Chi Abruzzo* has served as our Vice President; Regulatory and Clinical Affairs since February 2004. From 2002 to 2004, Ms. Abruzzo served as Senior Director, Regulatory and Clinical Affairs of Percutaneous Valve Technologies, Inc., a medical device manufacturer. From 1997 to 2002, Ms. Abruzzo served as Director of Regulatory Affairs and Manager of Regulatory Affairs of CryoLife, Inc., a publicly-held developer of implantable medical devices. Prior thereto, Ms. Abruzzo held a number of increasingly responsible positions in manufacturing, engineering, quality assurance, clinical research and regulatory affairs at various medical device companies, including Baxter International, Inc., Cordis Corporation and Cordis Endovascular (a subsidiary of Johnson & Johnson). Ms. Abruzzo received her B.S. from the University of Miami and is a Regulatory Affairs Certified Professional.

*James L. Lucky* has served as our Vice President; Quality Assurance and Healthcare Compliance since January 2004. From 1997 to 2004, Mr. Lucky served as Vice President of Quality Assurance and Regulatory Affairs for the medical segment of Teleflex, Inc., a publicly-held designer and manufacturer of specialty engineered devices for various industries. Prior to that position, Mr. Lucky held a number of quality assurance positions in the medical device industry, including at Ethicon Endo-Surgery, Inc., Bristol-Myers Squibb Company and Parker Hannifin Corp. Mr. Lucky received his B.S. from Western Michigan University, his M.S. from North Carolina State University and his M.B.A. from Duke University.

*Richard S. Walsh* has served as our Vice President; Sales since July 2004. From 2003 to 2004, Mr. Walsh served as Vice President of Sales for Stereotaxis, Inc., an emerging technology medical device company. From 1999 to 2003 he served as Director of Sales for Intuitive Surgical, Inc., a medical robotics company. Mr. Walsh

has over 15 years of emerging medical device sales experience combined with eight years of military officer experience in the United States Army and the Army National Guard. Mr. Walsh received his B.S. from Embry Riddle Aeronautical University.

*Donald C. Harrison, M.D.* has served as one of our directors since November 2000. Since 2003, Dr. Harrison has served as a general partner of Charter Life Sciences, L.P., a venture capital investment firm that holds approximately 10.4% of our common shares prior to this offering. He also serves as a director of several public and private companies, including Kendle International, a publicly-held clinical research company, UMD, Inc., a privately-held medical device company he founded, and EnteroMedics, Inc., a privately-held developer of medical devices for the treatment of obesity and gastrointestinal disorders. From 1986 to 2003, Dr. Harrison served in various capacities at the University of Cincinnati Medical Center, including Chief Executive Officer, Senior Vice President and Provost for Health Affairs. Dr. Harrison has previously served as a director of various publicly-held companies, including EP Technology, Inc., Novoste Corporation, InControl, Inc., and SciMed Inc. From 2000 to 2003, Dr. Harrison served as a director of Enable, a developer and manufacturer of surgical instruments that we anticipate acquiring contemporaneously with the closing of this offering. From 1968 to 1986, Dr. Harrison served as co-director of the Falk Cardiovascular Research Center in Stanford, California, Professor of Medicine and William G. Irwin Professor of Cardiology at Stanford University School of Medicine and Chief of Cardiology at Stanford University Hospital. Dr. Harrison received his B.S. from Birmingham Southern College and his M.D. from the University of Alabama College of Medicine.

*Alan L. Kaganov* has served as one of our directors since May 2001. Since 1996, Dr. Kaganov has been a member, and is generally referred to as “partner,” of Presidio Management Group VIII, LLC, the general partner of various U.S. Venture Partners, or USVP, entities that hold approximately 33.3% of our common shares prior to this offering. Dr. Kaganov has served as Chief Executive Officer of A-Med Systems, Inc., Aptus Endosystems, Inc. and Timi3 Systems, Inc., all USVP portfolio companies that design and develop medical devices. Dr. Kaganov also serves as a director of various privately-held companies, including A-Med Systems, Inc., Aptus Endosystems, Inc., CardioKinetix, Inc., Cryovascular Systems, Inc., Sanarus Medical, Inc., St. Francis Medical Center and Timi3 Systems, Inc. From 2000 to 2004, Dr. Kaganov served as a director of Curon Medical, a publicly-held medical device manufacturer. From 1993 to 1996, Dr. Kaganov served as Vice President, Business Development and Strategic Planning at Boston Scientific Corporation, a publicly-held medical device company. Dr. Kaganov received his B.S. from Duke University, his M.S. and a Sc.D. from Columbia University and his M.B.A. from New York University. In 1970, Dr. Kaganov was awarded a Career Fellowship from the National Institute of Health.

*Karen P. Robards* has served as one of our directors since November 2000. Since 1987, Ms. Robards has been the President of Robards & Company, a financial advisory firm. Since 1996, Ms. Robards has also served as a director of Enable, a developer and manufacturer of minimally invasive surgical instruments that we anticipate acquiring contemporaneously with the closing of this offering. From 1976 to 1987, Ms. Robards was an investment banker at Morgan Stanley where she headed its healthcare investment banking activities. Ms. Robards is the Independent Chair of the Board of several mutual funds managed by Merrill Lynch Investment Managers. Ms. Robards is a founder and President of the Cooke Center for Learning & Development, a not-for-profit educational organization in New York City. Ms. Robards received her B.A. from Smith College and her M.B.A. from Harvard Business School.

*Norman R. Weldon, Ph.D.* has served as one of our directors since November 2000 and served as Chairman of the Board from November 2000 to August 2002. Since 1992, Dr. Weldon has served as Managing Director of Partisan Management Group, Inc., a venture capital investment firm he co-founded. Dr. Weldon serves as a director of two mutual funds managed by Capital Research Management Company: The New Economy Fund and The SmallCap World Fund. He also serves as a director for several privately-held medical device companies, including Medivance, Inc., Neuronetics, Inc., HemoCleanse, Inc. and Ash Access Technology, Inc. From 2000 to 2002, Dr. Weldon served as a director of Renal Solutions, Inc., a privately-held medical device company. From 1987 to 2004, Dr. Weldon served as a director of Novoste Corporation, a publicly-held medical device company. From 1994 to 2002, Dr. Weldon served as a director of Enable, which he co-founded and which we anticipate

acquiring contemporaneously with the closing of the offering. From 1976 to 1979, Dr. Weldon served as Chief Executive Officer of CTS Corporation, a publicly-held electronics manufacturer. From 1979 to 1987, Dr. Weldon served as Chief Executive Officer of Cordis Corporation, a publicly-held medical device company. From 1987 to 1996, Dr. Weldon served as Chief Executive Officer of Corvita Corporation, a publicly-held medical device developer and manufacturer he co-founded. Dr. Weldon received his B.S., M.S. and Ph.D. from Purdue University.

*Lee R. Wrubel, M.D.* has served as one of our directors since February 2005. Since 2000, Dr. Wrubel has served as a General Partner of Foundation Medical Partners, LP, a venture capitalist investment firm that holds approximately 7.0% of our common shares prior to this offering. Dr. Wrubel also serves as a director of several privately-held medical device companies, including Vascular Architects, Inc., CardioMEMS, Inc. and EsophyX, Inc. Dr. Wrubel currently serves on the Translational Research Advisory Committee of the Muscular Dystrophy Association, and is a member of the Health Leadership Council of Save the Children. Dr. Wrubel received his B.A. from Lafayette College, his M.D. and M.P.H. from Tufts University School of Medicine and his M.B.A. from Columbia Business School.

**Board Composition**

Our board of directors currently has eight members. Pursuant to a voting agreement that will terminate upon the closing of this offering, the holders of our common stock nominated and elected David J. Drachman, Michael D. Hooven and Norman R. Weldon, Ph.D.; the holders of our Series A preferred stock nominated and elected Donald C. Harrison, M.D. and Karen P. Robards; the holders of our Series B preferred stock nominated and elected Alan L. Kaganov and Richard M. Johnston; and the holders of all our outstanding stock nominated and elected Lee R. Wrubel, M.D. See “Certain Relationships and Related Party Transactions—Voting Agreement.”

The authorized number of directors may be changed only by resolution adopted by a majority of the board of directors. The composition of the board of directors will satisfy the independence requirements of the NASDAQ National Market and the SEC.

**Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. Pursuant to our amended and restated bylaws, our board of directors may, from time to time, establish other committees to facilitate the management of our business and operations.

***Audit committee***

Our audit committee currently consists of Richard M. Johnston, Donald C. Harrison, M.D. and Karen P. Robards. Our audit committee is responsible for assuring the integrity of our financial control, audit and reporting functions and reviews with our management and our independent auditors the effectiveness of our financial controls and accounting and reporting practices and procedures. In addition, this committee reviews the qualifications of our independent auditors, is responsible for their appointment, compensation, retention and oversight and reviews the scope, fees and results of activities related to audit and non-audit services. The composition of the audit committee will satisfy the independence requirements of the NASDAQ National Market and the SEC.

***Compensation committee***

Our compensation committee consists of Alan L. Kaganov, Norman R. Weldon, Ph.D. and Lee R. Wrubel, M.D. The compensation committee’s principal responsibilities are to administer our stock plans and to set the salary and incentive compensation, including stock option grants, for our Chief Executive Officer and senior staff members. The composition of the compensation committee will satisfy the independence requirements of the NASDAQ National Market.

***Nominating and corporate governance committee***

Our nominating and governance committee consists of Norman R. Weldon, Ph.D., Donald C. Harrison, M.D., Richard M. Johnston and Karen P. Robards. The nominating and governance committee is responsible for reviewing and making recommendations on the composition of our board and selection of directors, periodically assessing the functioning of our board of directors and its committees, and making recommendations to our board of directors regarding corporate governance matters and practices. The composition of the nominating and corporate governance committee will satisfy the independence requirements of the NASDAQ National Market.

We strive to operate within a comprehensive plan of corporate governance for the purpose of defining responsibilities, setting high standards of professional and personal conduct and assuring compliance with these responsibilities and standards. We have implemented changes to our corporate governance structure and procedures in response to the Sarbanes-Oxley Act of 2002 and the NASDAQ National Market's current listing standards regarding corporate governance. Upon the closing of the offering, we believe that our current corporate governance structure and procedures will comply with applicable corporate governance requirements. We will strive to maintain our board of directors and committees in full compliance with these corporate governance requirements on an ongoing basis. We will also continue to regularly monitor developments in the area of corporate governance.

**Compensation Committee Interlocks and Insider Participation**

No interlocking relationship is expected to exist between our board of directors or compensation committee and the board of directors or compensation committee of any other entity, nor has any interlocking relationship existed in the past. Alan L. Kaganov, Norman R. Weldon, Ph.D. and Delos M. Cosgrove, III, M.D., a former director, served on our compensation committee in 2004.

**Director Compensation**

Historically, we have not compensated directors for their services as directors, and have only reimbursed our directors for reasonable out-of-pocket expenses incurred in connection with attending meetings of our board of directors and committees. Upon the closing of this offering, we will begin to pay non-employee directors an annual retainer of $15,000, an additional annual fee of $5,000 to each of the chairman of the board and the chairman of the audit committee and $2,500 to the chairperson of each of the other two committees of our board, a fee for each board meeting of $1,500 for in-person attendance and $500 for participation by telephone, and a fee for each committee meeting of $750 for in-person attendance and $350 for participation by telephone.

In addition, existing non-employee directors will receive stock options for shares of our common stock upon the closing of this offering and future non-employee directors will receive stock options for shares of our common stock upon joining the board of directors, which options will vest in 25% installments each year on the anniversary of the grant, followed by additional grants of options to purchase shares of our common stock upon each annual meeting of shareholders to non-employee directors who have served at least six months, which options will vest in 50% installments each year on the anniversary of the grant.

**Limitation on Liability and Indemnification of Officers and Directors**

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

In addition, our amended and restated certificate of incorporation provides that the liability of our directors for monetary damages shall be eliminated to the fullest extent permissible under the General Corporation Law of the State of Delaware. This provision in our amended and restated certificate of incorporation does not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies such as an injunction or other forms of non-monetary relief would remain available. Each director will continue to be subject to liability for any breach of the director's duty of loyalty to us and for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws.

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

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

**Executive Compensation**

***Summary compensation table***

The following table summarizes the compensation paid to, awarded to or earned during the fiscal year ended December 31, 2004 by our Chief Executive Officer and each of the four most highly compensated executive officers whose total salary and bonus exceed $100,000 for services rendered to us in all capacities during 2004. The executive officers listed in the table below are referred to in this prospectus as our named executive officers.

| | | Annual compensation(1) | | Long-term compensation | |
|---|---|---|---|---|---|
| Name and principal position(s) | Year | Salary | Bonus | Securities underlying options | All other compensation |
| David J. Drachman | 2004 | $200,000 | $69,000 | — | $ — |
| President and Chief Executive Officer | 2003 | 200,000 | 40,000 | — | 113,318(2) |
| | 2002 | 43,205 | 25,000 | | — |
| Michael D. Hooven | 2004 | 175,000 | — | — | — |
| Chief Technology Officer | 2003 | 175,000 | — | — | — |
| | 2002 | 137,083 | — | — | — |
| Elsa Chi Abruzzo | 2004 | 131,250 | 11,888 | — | 15,000(2) |
| Vice President; Regulatory and Clinical Affairs | 2003 | — | — | — | — |
| | 2002 | — | — | | — |
| James L. Lucky | 2004 | 125,000 | 18,828 | — | 52,383(2) |
| Vice President; Quality Assurance and | 2003 | — | — | — | — |
| Healthcare Compliance | 2002 | — | — | | — |
| Salvatore Privitera | 2004 | 125,000 | 19,078 | — | — |
| Vice President; Product Development | 2003 | 31,248 | 11,401 | — | — |
| | 2002 | — | — | | — |

*(1) In accordance with the rules of the SEC, the compensation disclosed in this table does not include various perquisites and other personal benefits received by a named executive officer that do not exceed the lesser of $50,000 or 10% of such officer's salary and bonus disclosed in this table.*

*(2) Consists of an allowance for moving expenses.*

### Option Grants in Fiscal Year 2004

The following table provides summary information concerning the individual grants of stock options to each of our named executive officers for the fiscal year ended December 31, 2004. The exercise price per share was valued by our board of directors at the estimated fair market value of a share of common stock on the date of grant.

| Named executive officers | Number of securities underlying options granted | Percentage of total options granted to employees | Exercise price per share | Expiration date | Potential realizable value at assumed annual rates of stock price appreciation for option term | | |
|---|---|---|---|---|---|---|---|
| | | | | | 0% | 5% | 10% |
| David J. Drachman | — | — % | $ — | — | $ — | $ — | $ — |
| Michael D. Hooven | — | — | — | — | — | — | — |
| Elsa Chi Abruzzo | | 11.8 | | 2/16/14 | | | |
| James L. Lucky | | 6.5 | | 1/1/14 | | | |
| Salvatore Privitera | — | — | — | — | — | — | — |

Each option represents the right to purchase one share of our common stock. These options generally become vested over four years. In 2004, we granted options to purchase an aggregate of shares of our common stock to various officers, employees, directors and others.

The potential realizable value at assumed annual rates of stock price appreciation for the option term represents hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. SEC rules specify the 0%, 5% and 10% assumed annual rates of compounded stock price appreciation, which do not represent our estimate or projection of our future common stock prices. These amounts represent assumed rates of appreciation in the value of our common stock from the initial public offering price (assuming an initial public offering price of $ per share). Actual gains, if any, on stock option exercises depend on the future performance of our common stock and overall stock market conditions. The amounts reflected in the table above may not necessarily be achieved.

### Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

There were no option exercises by the named executive officers during our fiscal year ended December 31, 2004. The following table summarizes the value of options held by them as of December 31, 2004. There was no public trading market for our common stock as of December 31, 2004. Accordingly, the value of each unexercised in-the-money options listed below has been calculated on the basis of the assumed initial public offering price of $ per share, less the applicable exercise price per share multiplied by the number of shares underlying the options.

| | | | Exercisable(1) | Unexercisable | Exercisable | Unexercisable |
|---|---|---|---|---|---|---|
| David J. Drachman | — | $ — | | | $ | $ |
| Michael D. Hooven | — | — | | | | |
| Elisa Chi Abruzzo | — | — | — | | | |
| James L. Lucky | — | — | — | | | |
| Salvatore Privitera | — | — | | | | |

*(1) Each of the outstanding options listed above may technically be exercised at any time, whether vested or unvested. Upon the exercise of an unvested option or the unvested portion of an option, the holder will receive shares of restricted stock with a vesting schedule the same as the vesting schedule previously applicable to the option. For purposes of the table above, only vested options have been listed as exercisable.*

### Employment, Severance and Change of Control Agreements

We have not entered into employment agreements with any of our executive officers. We have established a management bonus program for our executive officers that provides them the opportunity to earn a percentage of their base salary as a bonus upon the achievement of various objectives.

**Other Agreements**

All of our current employees and consultants have entered into agreements with us relating to the protection of our confidential information and the assignment of inventions.

None of our employees are employed for a specified term and each employee's employment with us is subject to termination at any time by either party for any reason, with or without cause.

We have entered into employment agreements with five employees of Enable that become effective upon the closing of the merger between Enable and us and will end on December 31, 2006. Pursuant to the terms of these agreements, each employee, subject to his continued employment, will be entitled to receive a guaranteed minimum base salary during the employment term and guaranteed minimum annual bonus payments in 2005 and 2006. In addition, we may terminate these employees only for cause at any time prior to the expiration of the agreement and three of these employees will be entitled to receive stock options to purchase shares of our common stock.

**Equity Compensation Plan Information**

***2001 Stock Option Plan***

In March 2001, our board of directors and shareholders approved the 2001 Stock Option Plan, or the 2001 Plan. The 2001 Plan was last amended by the board of directors on February 2, 2005. The 2001 Plan is designed to provide employees, non-employee members of the board of directors or non-employee members of the board of directors of any parent or subsidiary and consultants who provide services to us or any parent or subsidiary with the opportunity to receive grants of incentive stock options and non-statutory stock options. We believe that the 2001 Plan will promote our interests by providing participants with the opportunity to acquire or increase their proprietary interest in our corporation as an incentive for them to remain in the service of the corporation.

Under the 2001 Plan, we are authorized to grant shares and stock options for the purchase of up to a maximum of shares of our common stock. As of May 31, 2005:

- shares were issuable upon the exercise of outstanding options granted under the 2001 Plan at a weighted average exercise price of $ per share; and
- shares of common stock were issued upon the exercise of options at purchase prices ranging between $ and $ .

shares of common stock were available for future grants under the 2001 Plan as of May 31, 2005. Upon the closing of our initial public offering, we will no longer issue any additional options under the 2001 Plan. Although no future options will be granted under the 2001 Plan, all options previously granted under the 2001 Plan will continue to be outstanding and will be administered under the terms and conditions of the 2001 Plan.

***2005 Equity Incentive Plan***

Our board of directors adopted our 2005 Equity Incentive Plan on , 2005, and our shareholders approved it on , 2005. Our Equity Incentive Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, or the Code, to our employees and any parent or subsidiary's employees, and for the grant of nonstatutory stock options, stock purchase rights, restricted stock, stock appreciation rights, performance units and performance shares to our employees, directors and consultants and any parent or subsidiary's employees, directors and consultants.

As of , 2005, a total of shares of our common stock were reserved for issuance pursuant to the Equity Incentive Plan, of which no options were issued and outstanding as of that date. The Equity Incentive Plan will become effective contemporaneously with the closing of this offering. In addition, the shares reserved for issuance under our Equity Incentive Plan include (a) shares reserved but unissued under the 2001 Stock Option

Plan as of the effective date of this offering, (b) shares returned to the 2001 Stock Option Plan as the result of termination of options or the repurchase of shares issued under such plan, and (c) annual increases in the number of shares available for issuance on the first day of each year beginning with 2006, equal to the lesser of:

- 3.25% of the outstanding shares of common stock on the first day of our fiscal year;
- shares; or
- an amount our board may determine.

Our board of directors or a committee of our board administers our Equity Incentive Plan. In the case of options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the committee will consist of two or more "outside directors" within the meaning of Section 162(m) of the Code. The administrator has the power to determine the terms of the awards, including the exercise price, the number of shares subject to each such award, the exercisability of the awards and the form of consideration, if any, payable upon exercise. The administrator also has the authority to institute an exchange program by which outstanding awards may be surrendered in exchange for awards with a lower exercise price.

The administrator determines the exercise price of options granted under our Equity Incentive Plan, but with respect to nonstatutory stock options intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code and all incentive stock options, the exercise price must at least be equal to the fair market value of our common stock on the date of grant. The term of an incentive stock option may not exceed 10 years, except that with respect to any participant who owns 10% of the voting power of all classes of our outstanding stock, the term must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. The administrator determines the term of all other options.

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

After termination of an employee, director or consultant, he or she may exercise his or her option for the period of time stated in the option agreement. Generally, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will generally remain exercisable for three months. However, an option generally may not be exercised later than the expiration of its term.

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

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

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

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

Our Equity Incentive Plan provides that in the event of a "change of control," the successor corporation will assume or substitute an equivalent award for each outstanding option, stock appreciation right and stock purchase right. If there is no assumption or substitution of outstanding options, stock appreciation rights and stock purchase rights, the administrator will provide notice to the recipient that he or she has the right to exercise the option, stock appreciation right or stock purchase right as to all of the shares subject to the award, including shares that would not otherwise be exercisable, for a period of time as the administrator may determine from the date of the notice. The award will terminate upon the expiration of such period. In the event an outside director is terminated on or following a change in control, other than pursuant to a voluntary resignation, his or her options will fully vest and become immediately exercisable.

Our Equity Incentive Plan will automatically terminate in 2015, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate the Equity Incentive Plan, provided such action does not impair the rights of any participant.

**401(k) Plan**

We have established and maintained a retirement savings plan under section 401(k) of the Code to cover our eligible employees. The Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a tax-deferred basis through contributions to the 401(k) plan. We may make matching contributions to the 401(k) plan, subject to established limits. Our 401(k) plan is intended to constitute a qualified plan under Section 401(a) of the Code and its associated trust is exempt from federal income taxation under Section 501(a) of the Code. We contributed to our 401(k) plan contributions of approximately $36,000 for 2002, $75,000 for 2003 and $107,700 for 2004.

## PRINCIPAL AND SELLING SHAREHOLDERS

The following table shows information with respect to the beneficial ownership of our common stock as of May 31, 2005 and as adjusted to reflect the sale of the common stock being offered in this offering by:

- each person or group of affiliated persons or entities known by us to beneficially own 5% or more of our common stock;
- each of our directors;
- each of our named executive officers;
- each of the selling shareholders; and
- all of our directors and executive officers as a group.

Beneficial ownership and percentage ownership are determined in accordance with the rules of the SEC. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock underlying options and warrants that are exercisable within 60 days of May 31, 2005 are considered to be outstanding. To our knowledge, except as indicated in the footnotes to the following table and subject to community property laws where applicable, the persons named in this table have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them.

The following table reflects the conversion of all outstanding shares of our preferred stock outstanding as of May 31, 2005 into an aggregate of shares of our common stock, which conversion we intend to effect prior to the offering. This table is based on shares of our common stock (reflecting the conversion of our preferred stock into our common stock) outstanding as of May 31, 2005 and shares outstanding immediately after this offering.

Unless otherwise indicated, the address of each shareholder is c/o AtriCure, Inc., 6033 Schumacher Park Drive, West Chester, Ohio 45069.

| Name and address of beneficial owner | Shares beneficially owned prior to this offering: Common stock | Options and warrants | Percentage of shares | Shares to be sold in this offering | Shares beneficially owned after this offering: Common stock, options and warrants | Percentage without exercise of underwriters' over-allotment option | Percentage with exercise of underwriters' over-allotment option |
|---|---|---|---|---|---|---|---|
| **Five percent shareholders** | | | | | | | |
| Camden Partners(1)<br>One South Street, Suite 2150 Baltimore, MD 21202 | | — | 11.6% | | | % | % |
| Charter Ventures(2)<br>525 University Avenue,<br>Suite 1400<br>Palo Alto, CA 94301 | | | 10.4 | | | | |
| Foundation Medical Partners(3)<br>105 Rowayton Avenue Rowayton, CT 06853 | | — | 7.0 | | | | |
| U.S. Venture Partners(4)<br>2735 Sand Hill Road<br>Menlo Park, CA 94025 | | — | 33.3 | | | | |
| **Directors and named executive officers:** | | | | | | | |
| David J. Drachman | — | | 2.0 | | | | |
| Richard M. Johnston(1) | | — | 11.6 | | | | |
| Michael D. Hooven(5) | | | 9.7 | | | | |
| Elsa Chi Abruzzo | — | | * | | | | |
| James L. Lucky | — | | * | | | | |
| Salvatore Privitera | — | | * | | | | |
| Donald C. Harrison, M.D.(6) | | | 13.1 | | | | |
| Alan L. Kaganov(4) | | | 33.3 | | | | |
| Karen P. Robards | | | 2.2 | | | | |
| Norman R. Weldon, Ph.D(7). | | — | 8.2 | | | | |
| Lee R. Wrubel, M.D.(3) | | — | 7.0 | | | | |
| **All directors and executive officers as a group (13 persons)** | | | 84.7 | | | | |
| **Other selling shareholders:** | | | | | | | |
| Duke University Special Ventures Fund, Inc.(8) | | | | | | | |
| Robert A. Kline | | | | | | | |
| Elizabeth H. Lifschultz | | | | | | | |
| Lowell S. Lifschultz | | | | | | | |
| New England Partners Capital, L.P.(9) | | | | | | | |
| William P. Santamore, Ph.D. | | | | | | | |
| Roger Stern | | | | | | | |
| Randall K. Wolf, M.D. | | | | | | | |

* *Represents beneficial ownership of less than one percent of our outstanding common stock.*

*(1) Consists of shares held by Camden Partners Strategic Fund II-A, L.P. and shares held by Camden Partners Strategic Fund II-B, L.P. Mr. Johnston is a managing member of Camden Partners Holdings, LLC, which provides management and investment advisory services to Camden Partners Strategic Fund II-A, L.P. and Camden Partners Strategic Fund II-B, L.P. Richard M. Johnston, David L. Warnock, Richard M. Berkeley and Donald W. Hughes each may be deemed to share voting and investment power with respect to the securities held by these entities and disclaims beneficial ownership of the securities held by these entities, except as to his pecuniary interest therein.*

*(2) Consists of shares held by CLS I-IV, LLC; shares held by Charter Advisors Fund IV, L.P. and shares held by Charter Entrepreneurs Fund IV, L.P. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P. A Barr Dolan, Donald C. Harrison, M.D., Fred M. Schwarzer and Nelson Teng each may be deemed to share voting and investment power with respect to the securities held by CLS I-IV, LLC and disclaims beneficial ownership of the securities held by this entity, except as to their pecuniary interest therein. A Barr Dolan may be deemed to share voting and investment power with respect to the securities held by Charter Advisors Fund IV, L.P. and Charter Entrepreneurs Fund IV, L.P. and disclaims beneficial ownership of the securities held by these entities, except as to his pecuniary interest therein.*

*(3) Consists of shares held by Foundation Medical Partners, LP. Dr. Wrubel is a general partner of Foundation Medical Partners, LP. Lee R. Wrubel, M.D. and Jonathan M.D. Cool each may be deemed to share voting and investment power with respect to the securities held by this entity and disclaims beneficial ownership of the shares held by this entity, except as to his pecuniary interest therein.*

*(4) Consists of shares held by U.S. Venture Partners VIII, L.P.; shares held by USVP VIII Affiliated Fund, L.P.; shares held by USVP Entrepreneur Partners VIII-A, L.P. and shares held by USVP Entrepreneur Partners VIII-B, L.P. Dr. Kaganov is a member, and is generally referred to as a "partner," of Presidio Management Group VIII, LLC, the general partner of U.S. Venture Partners VIII, L.P., USVP VIII Affiliates Fund, L.P., USVP Entrepreneur Partners VIII-A, L.P. and USVP Entrepreneur Partners VIII-B, L.P. Dr. Kaganov does not have any voting or investment power over the securities held by these entities and disclaims ownership of the securities held by these entities, except as to his pecuniary interest therein.*

*(5) Consists of shares held by a trust for the benefit of Mr. Hooven; shares held by a trust for the benefit of Susan Spies, Mr. Hooven's wife; shares underlying options held by Mr. Hooven's wife; shares held by Mr. Hooven and shares held by a trust for the benefit of Brian A. Hooven, Mr. Hooven's son. Mr. Hooven may be deemed to share voting and investment power with respect to these shares.*

*(6) Consists of shares held by CLS I-IV, LLC; shares held by Charter Advisors Fund IV, L.P., and shares held by Charter Entrepreneurs Fund IV, L.P. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P. A Barr Dolan, Donald C. Harrison, M.D., Fred M. Schwarzer and Nelson Teng each may be deemed to share voting and investment power with respect to the securities held by CLS I-IV, LLC and disclaims beneficial ownership of the securities held by this entity, except as to their pecuniary interest therein. A Barr Dolan may be deemed to share voting and investment power with respect to the securities held by Charter Advisors Fund IV, L.P. and Charter Entrepreneurs Fund IV, L.P. and disclaims beneficial ownership of the securities held by these entities, except as to his pecuniary interest therein.*

*(7) Consists of shares held by The Weldon Foundation; shares held by Partisan Management Group and shares held by Carol J. Weldon, Dr. Weldon's wife. Dr. Weldon is the president of The Weldon Foundation and a managing director of Partisan Management Group. Dr. Weldon may be deemed to share voting and investment power with respect to the securities held by his wife and these entities and disclaims beneficial ownership of these shares, except as to their pecuniary interest therein.*

*(8) Thrustan B. Morton III, David R. Shumate and Gregory A. Hodgins, each may be deemed to share voting and investment power with respect to the securities held by these entities and disclaims beneficial ownership of the securities held by Duke University Special Ventures Fund, Inc., except as to their pecuniary interest therein.*

*(9) John F. Rousseau Jr., Edwin Snape, David A.R. Dullum and Robert J. Hanks each may be deemed to share voting and investment power with respect to the securities held by these entities and disclaims beneficial ownership of the securities held by New England Partners Capital L.P., except as to their pecuniary interest therein.*

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

From January 1, 2002 until the date of this prospectus, there has not been any transaction or series of similar transactions, nor is there currently proposed any transaction or series of similar transactions, to which we were, are, or would be a party, and in which the amount involved exceeded or would exceed $60,000 and in which any of our directors or executive officers, any holder of more than 5% of any class of our voting securities or any member of the immediate family of any of these persons had or will have a direct or indirect material interest, other than the compensation and compensation arrangements (including with respect to equity compensation) described in "Management" and the transactions described below.

We believe that we have executed all of the transactions described below on terms no less favorable to us than we could have obtained from unaffiliated third parties. It is our intention to ensure that all future transactions between us and our officers, directors and principal shareholders and their affiliates are on terms no less favorable to us than those that we could obtain from unaffiliated third parties and, in accordance with our audit committee charter and NASDAQ National Market rules, our audit committee shall review and approve all related party transactions that are significant in size.

### Issuances of Preferred Stock

In June 2002, we sold and issued an aggregate of shares of our Series B preferred stock at a purchase price of $ per share. We sold the shares pursuant to a preferred stock purchase agreement under which we made customary representations, warranties and covenants, and provided the purchasers with registration rights under the amended and restated investors' rights agreement discussed more fully in "Description of Capital Stock-Registration Rights." Upon the closing of this offering, all outstanding shares of Series B preferred stock will automatically convert into an aggregate of shares of common stock.

The following table summarizes the shares of our preferred stock purchased in these transactions during the three preceding fiscal years by our directors, executive officers and 5% shareholders and by the persons and entities associated with them in these private placement transactions.

| Investor | Series B convertible preferred stock |
|---|---|
| **Directors and executive officers** | |
| Richard M. Johnston(1) | |
| Donald C. Harrison, M.D.(2) | |
| Alan L. Kaganov(3) | |
| Karen P. Robards | |
| Norman R. Weldon, Ph.D.(4) | |
| Lee R. Wrubel, M.D.(5) | |
| **5% shareholders** | |
| Camden Partners(1) | |
| Charter Ventures(6) | |
| Foundation Medical Partners(5) | |
| U.S. Venture Partners(3) | |

*(1) Consists of shares of Series B preferred stock held by Camden Partners Strategic Fund II-A, L.P. and shares of Series B preferred stock held by Camden Partners Strategic Fund II-B, L.P. Mr. Johnston is a managing member of Camden Partners Holdings, LLC, which provides management and investment advisory services to these entities.*

*(2) Consists of shares of Series B Preferred Stock held by Dr. Harrison; shares of Series B preferred stock held by CLS I-IV, LLC; shares of Series B preferred stock held by Charter Entrepreneurs Fund IV, L.P. and shares of Series B preferred stock held by Charter Advisors Fund IV, L.P. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P.*

*(3) Consists of shares of Series B preferred stock held by U.S. Venture Partners VIII, L.P.; shares of Series B preferred stock held by USVP VIII Affiliates Fund, L.P.; shares of Series B preferred stock held by USVP Entrepreneur Partners VIII-A, L.P. and shares of Series B preferred stock held by USVP Entrepreneur Partners VIII-B, L.P. Dr. Kaganov is a member, and is generally referred to as "partner," of Presidio Management Group VIII, LLC, the general partner of U.S. Venture Partners VIII, L.P., USVP VIII Affiliates Fund, L.P., USVP Entrepreneur Partners VIII-A, L.P. and USVP Entrepreneur Partners VIII-B, L.P.*

*(4) Consists of shares of Series B preferred stock held by The Weldon Foundation; shares of Series B preferred stock held by Partisan Management Group and shares of Series B preferred stock held by Carol J. Weldon, Dr. Weldon's wife. Dr. Weldon is the president of The Weldon Foundation and a managing director of Partisan Management Group.*

*(5) Consists of shares of Series B preferred stock held by Foundation Medical Partners, LP. Dr. Wrubel is a general partner of Foundation Medical Partners, LP.*

*(6) Consists of shares of Series B preferred stock held by CLS I-IV, LLC; shares of Series B preferred stock held by Charter Entrepreneurs Fund IV, L.P. and shares of Series B preferred stock held by Charter Advisors Fund IV, L.P. Excludes shares of Series B preferred stock held by Dr. Harrison. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P.*

**Sales of Convertible Notes and Warrants**

In April 2002, we borrowed an aggregate amount of approximately $3,500,000 from existing shareholders and new investors. We issued each lending party a convertible promissory note bearing interest at 8% per annum. In June 2002, all principal and accrued interest under these notes were converted into shares of our Series B preferred stock. In addition, we issued to these parties warrants to purchase shares of our common stock at a purchase price of $ per share.

The purchasers of our convertible promissory notes and warrants to purchase our common stock include, among others, the following directors, executive officers and 5% shareholders:

| Investor | Total principal and interest converted | Shares of common stock underlying warrants |
|---|---|---|
| **Directors and executive officers** | | |
| Donald C. Harrison, M.D.(1) | $ 836,280 | |
| Alan L. Kaganov(2) | 1,717,000 | |
| Karen P. Robards(3) | 94,940 | |
| Norman R. Weldon, Ph.D.(4) | 613,070 | |
| **5% shareholders** | | |
| Charter Ventures(5) | 676,700 | |
| U.S. Venture Partners(2) | 1,717,000 | |

*(1) Consists of $159,580 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants, held by Dr. Harrison; $630,914 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by CLS I-IV, LLC; $11,991 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Charter Advisors Fund IV, L.P. and $33,795 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Charter Entrepreneurs Fund IV, L.P. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P.*

*(2) Consists of $1,680,428 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by U.S. Venture Partners VIII, L.P.; $12,383 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by USVP VIII Affiliated Fund, L.P.; $15,743 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by USVP Entrepreneur Partners VIII-A, L.P. and $8,447 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by USVP Entrepreneur Partners VIII-B, L.P. Dr. Kaganov is a member, and is generally referred to as a "partner," of Presidio Management Group VIII, LLC, the general partner of U.S. Venture Partners VIII, L.P., USVP VIII Affiliates Fund, L.P., USVP Entrepreneur Partners VIII-A, L.P. and USVP Entrepreneur Partners VIII-B, L.P.*

*(3) Consists of $94,940 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants.*

*(4) Consists of $151,500 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Partisan Management Group, Inc.; $151,500 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by The Weldon Foundation and $310,070 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Carol J. Weldon, Dr. Weldon's wife. Dr. Weldon is the president of The Weldon Foundation and a managing director of Partisan Management Group.*

*(5) Consists of $630,914 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by CLS I-IV, LLC.; $11,991 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Charter Advisors Fund IV, L.P. and $33,795 in aggregate amount of principal and interest of the 8% notes offered in 2002 and shares underlying warrants held by Charter Entrepreneurs Fund IV, L.P. Dr. Harrison is a manager of CLS I-IV, LLC. A. Barr Dolan, also a manager of CLS I-IV, LLC, is a manager of Charter Ventures IV Partners, LLC, the general partner of Charter Entrepreneurs Fund IV, L.P. and Charter Advisors Fund IV, L.P.*

**Enable Medical Corporation**

Contemporaneously with the closing of this offering, we anticipate closing our acquisition of Enable. Michael D. Hooven, our Chief Technology Officer and one of our directors, is a co-founder and the Chairman of the Board of Enable and owns, directly and indirectly, approximately 47% of its outstanding common stock. Karen P. Robards, one of our directors, owns, directly and indirectly, approximately 3% of Enable's outstanding common stock. Norman R. Weldon, Ph.D, one of our directors, owns, directly or indirectly, approximately 13% of Enable's outstanding common stock. These three members of our board of directors will receive a majority of the amounts we pay to acquire Enable. See "Business—Acquisition of Enable Medical Corporation" and "Risk Factors—Risks Relating to this Offering—We expect to use more than 10% of the net proceeds from this offering to acquire Enable, a related party, which acquisition could involve terms that are less favorable than an acquisition of an unrelated party."

In May 2001, we entered into a technology transfer agreement with Enable whereby Enable sold us its rights in certain patents and other intellectual property relating to the treatment of heart disease, including the treatment of cardiac arrhythmias. Enable also granted us an exclusive, royalty-free license to use certain of its other technologies in the field of heart disease, including cardiac arrhythmias, and agreed to provide us design support and program management services. The services portion of this agreement may be terminated by us without cause upon 60 days' prior written notice to Enable.

Since our spin-off from Enable in 2000, we have entered into a series of development, manufacturing and supply agreements with Enable, which were replaced in March 2003 by a two-year master development, manufacturing and supply agreement. Under this agreement, Enable agreed to provide certain development services with respect to our handpieces, granted us a royalty-free license to use Enable's technology in the field of cardiac arrhythmia treatment and to manufacture our handpieces. Pursuant to the terms of the master development, manufacturing and supply agreement with Enable, we were required to pay Enable a monthly fee of at least $96,000 for certain product development services during the period from February 1, 2003 to January 31, 2004. After January 31, 2004, there is no specified monthly fee requirement. Pursuant to our merger agreement with Enable, the term of this agreement was extended until December 31, 2005. Under the terms of this agreement, we and Enable have certain indemnification obligations, including with respect to claims relating to intellectual property infringement or misappropriation. For the year ended December 31, 2004, we paid approximately $6,170,000 for product development and purchases of inventory from Enable pursuant to this agreement.

**Right of First Refusal and Co-Sale Agreement**

In June 2002, we entered into a right of first refusal and co-sale agreement with the holders of our Series A preferred stock, the holders of our Series B preferred stock, certain of our founders and certain of our other holders of common stock, whereby the founders agreed, subject to certain exemptions, to grant us and the holders of our Series A preferred stock and Series B preferred stock certain rights of first refusal to purchase the founders' shares. Additionally, the founders agreed, subject to certain exemptions, to grant the holders of our Series A preferred stock and Series B preferred stock certain co-sale rights to sell their shares. All parties agreed to certain take-along rights requiring sale of all shares in the event the transaction has been approved by the requisite shareholders. This right of first refusal and co-sale agreement will terminate upon the closing of this offering.

**Voting Agreement**

Under the terms of our amended and restated voting agreement, which terminates upon the closing of this offering, the holders of our common stock are entitled to elect three board members, one of whom shall be the Chief Executive Officer; the holders of our Series A preferred stock are entitled to elect two board members, one of which is to be designated by Charter Ventures IV, L.P. and one by Partisan Management Group, Inc.; the holders of our Series B preferred stock are entitled to elect two board members, one of which is to be designated by U.S. Venture Partners VIII, L.P. and one by Camden Partners, Inc.; and one board member is to be elected by the holders of all classes of capital stock voting as a single class.

**Investors' Rights Agreement**

We and the holders of all outstanding shares of our preferred stock or warrants entered into an amended and restated investors' rights agreement, dated as of June 6, 2002. This agreement provides these holders with rights to receive financial information, inspection rights and preemptive rights, all of which rights will terminate upon the closing of this offering. This agreement also provides these holders with certain customary registration rights, which survive the closing of this offering. See "Description of Capital Stock—Registration Rights."

**Indemnification Agreements**

Prior to the closing of this offering, we will enter into indemnification agreements with our directors and executive officers for the indemnification of and advancement of expenses to these persons to the fullest extent permitted by law. We also intend to enter into these agreements with our future directors and executive officers.

## DESCRIPTION OF CAPITAL STOCK

The description below of our capital stock and provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the second amended and restated bylaws which will become effective at the closing of this offering and filed as exhibits to the registration statement of which this prospectus is a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur upon the closing of this offering.

### General

Our amended and restated certificate of incorporation, to become effective at the closing of this offering, authorizes the issuance of up to 90,000,000 shares of common stock, par value $0.001 per share, and 10,000,000 shares of preferred stock, par value $0.001 per share. The rights and preferences of the preferred stock may be established from time to time by our board of directors.

Immediately after the closing of this offering, we will have approximately shares of common stock outstanding, assuming no exercise of the underwriters' over-allotment option and no exercise of options or warrants to acquire additional shares of common stock and, after giving effect to the conversion of all of our outstanding shares of preferred stock into shares of our common stock, we will have no shares of preferred stock outstanding.

### Common Stock

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the shareholders and holders of our common stock do not have cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose.

Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of common stock are entitled to receive ratably any dividends, if any, that may be declared from time to time by the board of directors out of legally available funds for that purpose. In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock then outstanding.

Holders of common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are, and the shares of common stock offered by us in this offering, when issued and paid for, will be fully paid and nonassessable. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock, which we may designate in the future.

### Preferred Stock

Upon the closing of this offering, our board of directors will be authorized, subject to any limitations prescribed by law, without shareholder approval, to issue up to an aggregate of shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions granted to or imposed upon the preferred stock, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences. The rights of the holders of common stock will be subject to, and may be adversely affected by, the rights of holders of any preferred stock that may be issued in the future. Issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of delaying, deferring or preventing a change in control of our company. We have no present plans to issue any shares of preferred stock.

**Warrants**

As of May 31, 2005, there were warrants outstanding to purchase shares of common stock at an exercise price of $ per share, assuming the shares of the Series B preferred stock underlying the warrants have been converted into common stock, and an additional warrant outstanding to purchase shares of our common stock at an exercise price of $ per share. All of the outstanding warrants will expire one year after closing of this offering.

**Stock Options**

We intend to file a registration statement under the Securities Act covering shares of common stock reserved for issuance pursuant to our stock plans. That registration statement is expected to become effective upon filing with the SEC. Accordingly, common stock registered under that registration statement will, subject to vesting provisions and limitations as to the volume of shares that may be held by our affiliates under the Rule 144 described above, be available for sale in the open market unless the holder is subject to the 180-day lock-up period.

As of May 31, 2005, options to purchase shares of common stock were issued and outstanding at a weighted average exercise price of $ per share. Upon the expiration of the lock-up period described above, at least shares of common stock will be subject to vested options.

**Registration Rights**

We and the holders of all outstanding shares of our preferred stock or warrants entered into an amended and restated investors' rights agreement, dated as of June 6, 2002. This agreement provides these holders with customary demand and piggyback registration rights with respect to the shares of common stock to be issued upon conversion of their preferred stock or exercise of their warrants. These holders have agreed to waive their registration rights under this agreement in connection with this offering.

***Demand Registration***

According to the terms of the amended and restated investors' rights agreement, after the earlier of June 6, 2006 and the date that is 180 days after the first public offering, holders of an aggregate of at least 20% of the shares having registration rights (including common stock issued or issuable upon conversion of the outstanding preferred stock and upon the exercise of stock purchase warrants) have the right to require us to register their shares with the SEC for resale to the public, subject to limited exceptions. In addition, holders who hold together an aggregate of less than 20% of the shares having registration rights may require a registration of their shares that is reasonably expected to have an aggregate offering price which equals or exceeds $10,000,000, net of underwriting discounts and commissions. We are not required to effect more than two of these demand registrations. We have currently not effected, or received a request for, any demand registrations.

***Piggyback Registration***

If we file a registration statement for a public offering of any of our securities, for our account or the account of any security holder, the holders of preferred stock (including common stock issued or issuable upon conversion of the outstanding preferred stock and upon exercise of stock purchase warrants) will have the right to include their shares in the registration statement, subject to limited exceptions.

***Form S-3 Registration***

At any time after we become eligible to file a registration statement on Form S-3, the holders of shares having registration rights (including common stock issued or issuable upon conversion of the outstanding preferred stock and upon exercise of stock purchase warrants) may require us to file a Form S-3 registration

statement, provided that the aggregate offering price (net of underwriting discounts and commissions) of such registration must be at least $0.5 million. We are obligated to file only two Form S-3 registration statements in any twelve-month period.

These demand, piggyback and Form S-3 registration rights are subject to certain conditions and limitations, including the right of the underwriters of an offering to limit the number of shares of common stock to be included in the registration. We are generally required to bear the expenses of all registrations. However, we generally will not pay for any expenses of any demand or S-3 registration if the request is subsequently withdrawn by the holders who requested such registration unless the withdrawal is based on material adverse information about the company not available at the time of the registration request or the right to demand one registration is forfeited by all holders of the right. The amended and restated investors' rights agreement also contains our commitment to indemnify the holders of registration rights for losses attributable to statements or omissions by us incurred with registrations under the agreement.

**Anti-Takeover Effects of Provisions of Our Amended and Restated Certificate of Incorporation and Bylaws**

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws to be effective upon completion of this offering may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of us. Because our shareholders do not have cumulative voting rights, our shareholders representing a majority of the shares of common stock outstanding will be able to elect all of our directors. Our amended and restated certificate of incorporation and amended and restated bylaws to be effective at the closing of this offering will provide that all shareholder action must be effected at a duly called meeting of shareholders and not by a consent in writing, and that only our board of directors, chairman of the board, chief executive officer or president (in the absence of a chief executive officer) may call a special meeting of shareholders. Our amended and restated certificate of incorporation which will become effective at the closing of this offering will require a 66 2/3% shareholder vote for the amendment, repeal or modification of certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws relating to the absence of cumulative voting, limitations of liability of our directors, the requirement that shareholder actions be effected at a duly-called meeting and the designated parties entitled to call a special meeting of the shareholders.

The combination of the lack of cumulative voting and the 66 2/3% shareholder voting requirement will make it more difficult for our existing shareholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing shareholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

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

**Delaware Anti-Takeover Statute**

We are subject to Section 203 of the Delaware General Corporation Law. This law prohibits a publicly held Delaware corporation from engaging in any "business combination" with any "interested shareholder" for a period of three years following the date that the shareholder became an interested shareholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors or officers or by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested shareholder.

Section 203 defines "business combination" to include:

- any merger or consolidation involving the corporation and the interested shareholder;
- any sale, transfer, pledge or other disposition of 10% or more of our assets involving the interested shareholder;
- in general, any transaction that results in the issuance or transfer by us of any of our stock to the interested shareholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested shareholder; or
- the receipt by the interested shareholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

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

**Limitation of Liability**

Our amended and restated certificate of incorporation provides that no director shall be personally liable to us or to our shareholders for monetary damages for breach of fiduciary duty as a director, except that the limitation shall not eliminate or limit liability to the extent that the elimination or limitation of such liability is not permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended.

**The NASDAQ National Market**

We have applied for the quotation of our common stock on the NASDAQ National Market under the symbol "ATRC."

**Transfer Agent and Registrar**

Upon the closing of this offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company.

## MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-UNITED STATES HOLDERS

The following is a summary of the material United States federal income and estate tax consequences of the acquisition, ownership and disposition of our common stock purchased pursuant to this offering by a beneficial owner of our common stock that, for United States federal income tax purposes, is not a "United States person," as we define that term below. A beneficial owner of our common stock who is not a United States person is referred to below as a "non-United States holder." This summary is based upon current provisions of the United States Internal Revenue Code, United States Treasury regulations promulgated thereunder, judicial opinions, administrative pronouncements and published rulings of the United States Internal Revenue Service all as in effect as of the date hereof. These authorities may be changed, possibly retroactively, resulting in United States federal tax consequences different from those set forth below. We have not sought, and will not seek, any ruling from the United States Internal Revenue Service with respect to the statements made in the following summary, and there can be no assurance that the United States Internal Revenue Service will not take a position contrary to such statements or that any such contrary position taken by the United States Internal Revenue Service would not be sustained.

This summary is limited to non-United States holders who purchase our common stock issued pursuant to this offering and who hold our common stock as a capital asset, which generally is property held for investment. This summary also does not address the tax considerations arising under the laws of any foreign, state or local jurisdiction, or under United States federal estate or gift tax laws, except as specifically described below. In addition, this summary does not address tax considerations that may be applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

- banks, insurance companies or other financial institutions;
- partnerships;
- United States expatriates;
- controlled foreign corporations;
- passive foreign investment companies;
- tax-exempt organizations;
- tax-qualified retirement plans;
- dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings; or
- persons that will hold common stock as a position in a hedging transaction, "straddle" or "conversion transaction" for tax purposes.

If a partnership, including any entity treated as a partnership for United States federal income tax purposes, is a holder, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A holder that is a partnership, and partners in such partnership, should consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of our common stock.

For purposes of this discussion, a United States person means any one of the following:

- an individual citizen or resident of the United States;
- a corporation, including any entity treated as a corporation for United States federal income tax purposes, or partnership, including any entity treated as a partnership for United States federal income tax purposes, created or organized under the laws of the United States, any state thereof or the District of Columbia;

- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust, if the administration of the trust is subject to the primary supervision of a United States court and one or more United States persons have the authority to control all substantial decisions of the trust, or the trust has made a valid election under United States Treasury regulations to be treated as a United States person for United States federal income tax purposes.

An individual may be treated as a resident of the United States in any calendar year for United States federal income tax purposes, instead of a nonresident, by, among other ways, being present in the United States for at least 31 days in that calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. For purposes of this calculation, you would count all of the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year. Residents are taxed for United States federal income tax purposes as if they were United States citizens.

YOU ARE URGED TO CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO YOUR PARTICULAR SITUATION AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER THE UNITED STATES FEDERAL ESTATE OR GIFT TAX RULES OR UNDER THE LAWS OF ANY STATE, LOCAL, FOREIGN OR OTHER TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

**Dividends**

If distributions are paid on shares of our common stock, such distributions will constitute dividends for United States federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, it will constitute a return of capital that is applied against and reduces, but not below zero, your adjusted tax basis in our common stock. Any remainder will constitute gain on the common stock. Dividends paid to a non-United States holder generally will be subject to withholding of United States federal income tax at the rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

If the dividend is effectively connected with the non-United States holder’s conduct of a trade or business in the United States and, if a tax treaty applies, attributable to a United States permanent establishment maintained by such non-United States holder, the dividend will not be subject to any withholding tax, provided certain certification requirements are met, as described below, but will be subject to United States federal income tax imposed on net income on the same basis that applies to United States persons generally. A corporate holder under certain circumstances also may be subject to a branch profits tax equal to 30%, or such lower rate as may be specified by an applicable income tax treaty, of a portion of its effectively connected earnings and profits for the taxable year.

In order to claim the benefit of a tax treaty or to claim exemption from withholding because the income is effectively connected with the conduct of a trade or business in the United States, a non-United States holder must provide a properly executed United States Internal Revenue Service Form W-8BEN for treaty benefits or W-8ECI for effectively connected income, or such successor forms as the United States Internal Revenue Service designates, prior to the payment of dividends. These forms must be periodically updated. Non-United States holders may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund.

**Gain on Disposition**

A non-United States holder generally will not be subject to United States federal income tax on gain recognized on a disposition of our common stock unless:

- the gain is effectively connected with the non-United States holder’s conduct of a trade or business in the United States and, if an income tax treaty applies, is attributable to a permanent establishment maintained by the non-United States holder in the United States; in these cases, the gain will be taxed on

a net income basis at the regular graduated rates and generally in the manner applicable to United States persons and, if the non-United States holder is a foreign corporation, the "branch profits tax" described above may also apply;

- the non-United States holder is an individual who holds our common stock as a capital asset, is present in the United States for 183 days or more in the taxable year of the disposition and meets other requirements; or
- we are or have been a "United States real property holding corporation" for United States federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that the non-United States holder held our common stock.

We believe that we have not been and are not currently, and we do not anticipate becoming in the future, a "United States real property holding corporation" for United States federal income tax purposes.

**United States Federal Estate Taxes**

Our common stock owned or treated as owned by an individual who at the time of death is a non-United States holder will be included in his or her estate for United States federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

**United States Information Reporting and Backup Withholding**

Under United States Treasury regulations, we must report annually to the United States Internal Revenue Service and to each non-United States holder the amount of dividends, if any, paid to such non-United States holder and the tax withheld with respect to those dividends. These information reporting requirements apply even if withholding was not required because the dividends were effectively connected dividends or withholding was reduced or eliminated by an applicable tax treaty. Pursuant to an applicable tax treaty, that information may also be made available to the tax authorities in the country in which the non-United States holder resides.

United States federal backup withholding, currently at a 28% rate of tax, generally will not apply to payments of dividends made by us or our paying agents, in their capacities as such, to a non-United States holder of our common stock if the holder has provided the required certification that it is not a United States person or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a United States person.

Payments of the proceeds from a disposition or a redemption effected outside the United States by a non-United States holder of our common stock made by or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting, but not backup withholding, generally will apply to such a payment if the broker has certain connections with the United States unless the broker has documentary evidence in its records that the beneficial owner is a non-United States holder and specified conditions are met or an exemption is otherwise established.

Payment of the proceeds from a disposition by a non-United States holder of common stock made by or through the United States office of a broker generally is subject to information reporting and backup withholding unless the non-United States holder certifies that it is not a United States person under penalties of perjury (and we and our paying agent do not have actual knowledge, or reason to know, that the holder is a United States person) or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts that we withhold under the backup withholding rules will be refunded or credited against the non-United States holder's United States federal income tax liability if certain required information is furnished to the United States Internal Revenue Service. Non-United States holders should consult their own tax advisors regarding application of backup withholding in their particular circumstance and the availability of, and procedure for obtaining, an exemption from backup withholding under current United States Treasury regulations.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, we had 85 holders of our common stock and there was no public market for our common stock. Future sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could adversely affect the price of our common stock.

Based on the number of shares outstanding as of May 31, 2005, we will have approximately shares of our common stock outstanding after the completion of this offering (approximately shares if the underwriters exercise their over-allotment option in full). Of those shares, the shares of common stock sold in this offering ( shares if the underwriters exercise their over-allotment option in full) will be freely transferable without restriction, unless purchased by our affiliates. The remaining shares of common stock to be outstanding immediately following the completion of this offering, which are "restricted securities" under Rule 144 of the Securities Act of 1933, or Rule 144, as well as any other shares held by our affiliates, may not be resold except pursuant to an effective registration statement or an applicable exemption from registration, including an exemption under Rule 144.

We, the holders of shares of outstanding common stock as of the closing of this offering, and the holders of shares of common stock underlying options and warrants outstanding as of the closing of this offering, including all of our officers and directors, have entered into lock-up agreements pursuant to which we and they have generally agreed, subject to certain exceptions, not to offer, sell, contract to sell or otherwise dispose of, directly or indirectly, or hedge our common stock or securities convertible into or exchangeable or exercisable for our common stock. for a period of 180 days from the date of this prospectus without the prior written consent of UBS Securities LLC and Piper Jaffray & Co.

After the offering, the holders of shares of our common stock, including shares of our common stock issuable upon the exercise of outstanding warrants, will be entitled to certain registration rights. For more information on these registration rights, see "Description of capital stock—Registration Rights."

In general, under Rule 144, as currently in effect, an affiliate of ours who beneficially owns shares of our common stock that are not restricted securities, or a person who beneficially owns for more than one year shares of our common stock that are restricted securities, may generally sell, within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering (approximately shares if the underwriters exercise their over-allotment option in full); and
- the average weekly trading volume of our common stock on the NASDAQ National Market during the four preceding calendar weeks.

Sales under Rule 144 are also subject to requirements with respect to manner of sale, notice and the availability of current public information about us. Generally, a person who was not our affiliate at any time during the three months before the sale, and who has beneficially owned shares of our common stock that are restricted securities for at least two years, may sell those shares without regard to the volume limitations, manner of sale provisions, notice requirements or the requirements with respect to availability of current public information about us.

Generally, an employee, officer, director or consultant who purchased shares of our common stock before the effective date of the registration statement of which this prospectus is a part, or who holds options as of that date, pursuant to a written compensatory plan or contract, may rely on the resale provisions of Rule 701 under the Securities Act. Under Rule 701, these persons who are not our affiliates may generally sell their eligible securities, commencing 90 days after the effective date of the registration statement of which this prospectus is a part, without having to comply with the public information, holding period, volume limitation or notice

provisions of Rule 144. These persons who are our affiliates may generally sell their eligible securities pursuant to Rule 701, commencing 90 days after the effective date of the registration statement of which this prospectus is a part, without having to comply with Rule 144's one-year holding period restriction.

Neither Rule 144 nor Rule 701 supersedes the contractual obligations of our security holders set forth in the lock-up agreements described above.

The pro forma shares of our common stock that were outstanding on , assuming conversion of our preferred stock in connection with this initial public offering, and assuming no shares are released from the lock-up agreements described above prior to 180 days after the date of this prospectus, will become eligible for sale pursuant to Rule 144 or Rule 701 without registration approximately as follows:

- shares of common stock that are not subject to the 180-day lock-up period described above will be immediately eligible for sale in the public market without restriction upon the effective date of the registration statement of which this prospectus is a part;
- shares of common stock that are subject to the 180-day lock-up period described above will be eligible for sale in the public market without restriction immediately upon expiration of the 180-day lock-up period described above; and
- shares of common stock that are subject to the 180-day lock-up period described above will be eligible for sale in the public market under Rule 144 or Rule 701, immediately upon expiration of the 180-day lock-up period described above, subject to the volume, manner of sale and other limitations pursuant to those rules.

Additionally, of the shares issuable upon exercise of options or warrants to purchase our common stock outstanding as of , approximately shares will be vested and eligible for sale 180 days after the date of this prospectus.

**Equity Compensation**

We have reserved an aggregate of shares of our common stock for issuance under our stock plans as of the closing of this offering. As of May 31, 2005, we had outstanding options under our 2001 Plan to purchase shares of our common stock and no outstanding options under our 2005 Plan. We intend to register the shares reserved for issuance pursuant to our 2001 Plan and our 2005 Plan on a registration statement under the Securities Act of 1933 on Form S-8 following this offering. Subject to the lock-up agreements and the restrictions imposed under our plans, shares of common stock issued pursuant to our plans after the effective date of any registration statement on Form S-8 will be available for sale in the public market without restriction to the extent that they are held by persons who are not our affiliates.

## UNDERWRITING

We and the selling shareholders are offering the shares of our common stock described in this prospectus through the underwriters named below. UBS Securities LLC, Piper Jaffray & Co., Thomas Weisel Partners LLC and A.G. Edwards & Sons, Inc. are the representatives of the underwriters. UBS Securities LLC and Piper Jaffray & Co. are the joint book-running managers of this offering. We and the selling shareholders have entered into an underwriting agreement with the representatives. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase the number of shares of common stock listed next to its name in the following table:

| Underwriters | Number of shares |
|---|---|
| UBS Securities LLC | |
| Piper Jaffray & Co. | |
| Thomas Weisel Partners LLC | |
| A.G. Edwards & Sons, Inc. | |
| Total | |

The underwriting agreement provides that the underwriters must buy all of the shares if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

Our common stock is offered subject to a number of conditions, including:

- receipt and acceptance of our common stock by the underwriters; and
- the underwriters' right to reject orders in whole or in part.

The representatives have advised us that the underwriters intend to make a market in our common stock but that they are not obligated to do so and may discontinue making a market at any time without notice.

In connection with this offering, certain of the underwriters or securities dealers may distribute prospectuses electronically.

Sales of shares made outside of the United States may be made by affiliates of the underwriters.

### Over-Allotment Option

We and certain of our shareholders have granted the underwriters an option to buy up to additional shares of our common stock. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each purchase additional shares approximately in proportion to the amounts specified in the table above. If the underwriters exercise their option for less than all shares, the first shares shall be purchased from the selling shareholders.

### Commissions and Discounts

Shares sold by the underwriters to the public will initially be offered at the initial offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. Any of these securities dealers may resell any shares purchased from the underwriters to other brokers or dealers at a discount of up to $ per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms. Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein and, as a result, will thereafter bear any risk associated with changing the offering price to the public or other selling terms. The underwriters have informed us that they do not expect discretionary sales to exceed 5% of the shares of common stock to be offered.

The following table shows the per share and total underwriting discounts and commissions we and the selling shareholders will pay to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional 600,000 shares.

| | No exercise | Full exercise |
|---|---|---|
| Per share | $ | $ |
| Total to be paid by us | $ | $ |
| Total to be paid by selling shareholders | $ | $ |

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

**No Sales of Similar Securities**

We, our officers and directors and our existing shareholders, have entered into lock-up agreements with the underwriters. Under these agreements, subject to certain exceptions, we and each of these persons may not, without the prior written approval of UBS Securities LLC and Piper Jaffray & Co., offer, sell, contract to sell or otherwise dispose of, directly or indirectly, or hedge our common stock or securities convertible into or exchangeable or exercisable for our common stock. These restrictions will be in effect for a period of 180 days after the date of this prospectus. The 180-day lock-up period may be extended under certain circumstances where we release, or pre-announce a release of, our earnings or material news or a material event shortly before or after the termination of the 180-day period. At any time and without public notice, UBS Securities LLC and Piper Jaffray & Co. may in their sole discretion release all or some of the securities from these lock-up agreements.

**Indemnification**

We and the selling shareholders have agreed to indemnify the underwriters against certain liabilities, including certain liabilities under the Securities Act. If we or the selling shareholders are unable to provide this indemnification, we and the selling shareholders have agreed to contribute to payments the underwriters may be required to make in respect of those liabilities.

**NASDAQ National Market Quotation**

We have applied to have our common stock approved for quotation on the NASDAQ National Market under the trading symbol "ATRC."

**Price Stabilization, Short Positions**

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock, including:

- stabilizing transactions;
- short sales;
- purchases to cover positions created by short sales;
- imposition of penalty bids; and
- syndicate covering transactions.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our common stock while this offering is in progress. These transactions may also include making short sales of our common stock, which involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering and purchasing shares of common

stock on the open market to cover positions created by short sales. Short sales may be "covered short sales," which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked short sales," which are short positions in excess of that amount.

The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. The underwriters may carry out these transactions on the NASDAQ National Market, in the over-the-counter market or otherwise.

**Determination of Offering Price**

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiation by us and the representatives of the underwriters. The principal factors to be considered in determining the initial public offering price include:

- the information set forth in this prospectus and otherwise available to the representatives;
- our history and prospects, and the history of and prospects for the industry in which we compete;
- our past and present financial performance and an assessment of our management;
- our prospects for future earnings and the present state of our development;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and the demand for, publicly-traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

**Affiliations**

Certain of the underwriters and their affiliates have in the past provided and may from time to time provide certain commercial banking, financial advisory, investment banking and other services for us and certain of the selling shareholders for which they were and will be entitled to receive separate fees.

## LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Epstein Becker & Green, P.C., New York, New York. As of the date of this prospectus, a member of Epstein Becker & Green, P.C. and his spouse hold an aggregate of shares of our common stock and are selling shareholders. Certain matters will be passed upon for the underwriters by Simpson Thacher & Bartlett LLP, New York, New York.

## EXPERTS

The financial statements of AtriCure, Inc. and Enable Medical Corporation included in this prospectus have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports appearing herein and are included in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933 with respect to the common stock we are offering. This prospectus, which constitutes a part of the registration statement, does not contain all of the information in the registration statement and the exhibits of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and to the exhibits to the registration statement.

You may read and copy the registration statement, of which this prospectus is a part, at the SEC's Public Reference Room, which is located at 100 F Street, N.E., Washington, D.C. 20549. You can request copies of the registration statement by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the SEC's Public Reference Room. In addition, the SEC maintains an Internet website, which is located at *http://www.sec.gov*, which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. You may access the registration statement, of which this prospectus is a part, at the SEC's Internet website. Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, and we will file reports, proxy statements and other information with the SEC.

## INDEX TO FINANCIAL STATEMENTS

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors
AtriCure, Inc.
Cincinnati, Ohio

We have audited the accompanying balance sheets of AtriCure, Inc. (the "Company") as of December 31, 2004 and 2003, and the related statements of operations, shareholders' deficit and cash flows for each of the three years in the period ended December 31, 2004. Our audits also include the financial statement schedule listed in the Index at Item 16. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2004 and 2003, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

April 12, 2005

**ATRICURE, INC.**

**BALANCE SHEETS**
**DECEMBER 31, 2004 and 2003**

| | 2004 | 2003 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 5,175,177 | $ 10,399,338 |
| Accounts receivable, less allowance for doubtful accounts of $56,779 in 2004 and $27,877 in 2003 | 3,520,621 | 1,627,826 |
| Inventory | 1,087,408 | 638,995 |
| Prepaid expenses | 112,740 | 210,222 |
| Total current assets | 9,895,946 | 12,876,381 |
| Property and equipment: | | |
| Machinery and equipment | 3,463,964 | 2,234,251 |
| Computers and other office equipment | 400,517 | 294,885 |
| Furniture and fixtures | 153,471 | 70,180 |
| Leasehold improvements | 39,353 | 8,038 |
| Total | 4,057,305 | 2,607,354 |
| Less accumulated depreciation | (1,647,254) | (731,660) |
| Property and equipment, net | 2,410,051 | 1,875,694 |
| Prepaid legal costs | 390,970 | |
| Other assets | 33,653 | 7,170 |
| Total assets | $ 12,730,620 | $ 14,759,245 |
| **Liabilities and shareholders' deficit** | | |
| Current liabilities: | | |
| Accounts payable(a) | $ 733,444 | $ 278,714 |
| Commissions payable | 791,639 | 226,595 |
| Accrued bonus | 236,268 | |
| Accrued legal | 462,180 | 12,500 |
| Accrued vacation and sick pay | 175,698 | 91,005 |
| Accrued payroll taxes | 23,413 | 12,431 |
| Other accrued liabilities | 883,131 | 269,841 |
| Total current liabilities | 3,305,773 | 891,086 |
| Redeemable preferred stock: | | |
| Preferred stock, $0.0001 par value; designated Series A, 8,293,579 shares authorized, issued and outstanding as of December 31, 2004 and 2003 | 7,979,396 | 7,172,080 |
| Preferred stock $0.0001 par value; designated Series B, 15,426,936 shares authorized; 14,552,097 issued and outstanding as of December 31, 2004 and 2003 | 28,776,745 | 25,632,921 |
| Total redeemable preferred stock | 36,756,141 | 32,805,001 |
| Shareholders' deficit: | | |
| Common stock, $0.0001 par value, 40,000,000 shares authorized as of December 31, 2004 and 2003; 7,144,641 and 6,862,000 shares issued and outstanding as of December 31, 2004 and 2003, respectively | 714 | 686 |
| Additional paid-in capital | 3,282,613 | 1,197,642 |
| Unearned compensation | (981,612) | |
| Accumulated deficit | (29,633,009) | (20,135,170) |
| Total shareholders' deficit | (27,331,294) | (18,936,842) |
| Total liabilities and shareholders' deficit | $ 12,730,620 | $ 14,759,245 |

*(a) Includes the following liabilities resulting from transactions with related parties:*

| | | |
|---|---|---|
| *Accounts payable* | *$ 376,000* | *$ 221,000* |

See notes to financial statements.

**ATRICURE, INC.**

**STATEMENTS OF OPERATIONS**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Revenues: | | | |
| Sales of products | $ 18,946,037 | $ 9,792,350 | $ 1,766,180 |
| Commissions | 210,995 | | |
| Total revenues | 19,157,032 | 9,792,350 | 1,766,180 |
| Cost of revenues(a) | 5,201,562 | 2,612,303 | 681,527 |
| Gross profit | 13,955,470 | 7,180,047 | 1,084,653 |
| Expenses: | | | |
| Research and development expenses(a) | 4,422,014 | 2,500,969 | 2,720,868 |
| Selling, general and administrative expenses | 15,186,081 | 8,036,358 | 4,026,214 |
| Total expenses | 19,608,095 | 10,537,327 | 6,747,082 |
| Loss from operations | (5,652,625) | (3,357,280) | (5,662,429) |
| Preferred stock interest expense | 3,905,169 | 3,905,169 | 2,562,529 |
| Other interest income (expense), net | 105,926 | 154,377 | (806,486) |
| Net loss available to common shareholders | $ (9,451,868) | $ (7,108,072) | $ (9,031,444) |
| Basic and diluted loss per share | $ (1.36) | $ (1.04) | $ (1.34) |
| Weighted average shares outstanding: | | | |
| Basic and diluted | 6,948,116 | 6,807,992 | 6,753,652 |

*(a) Includes the following expenses resulting from transactions with related parties:*

| | | | |
|---|---|---|---|
| *Cost of revenues* | *$ 4,941,341* | *$ 2,568,407* | *$ 1,082,000* |
| *Research and development expenses* | *$ 1,228,659* | *$ 981,593* | *$ 1,069,000* |

See notes to financial statements.

**ATRICURE, INC.**

**STATEMENTS OF SHAREHOLDERS' DEFICIT**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

| | Common Stock | | Additional Paid-In Capital | Unearned Compensation | Accumulated Deficit | Total Deficit |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| Balance—December 31, 2001 | 6,730,875 | $ 673 | $ 101,406 | | $ (3,942,883) | $ (3,840,804) |
| Proceeds from exercise of stock options to purchase common stock | 52,375 | 5 | 7,851 | | | 7,856 |
| Accretion of issuance costs—preferred stock | | | | | (23,479) | (23,479) |
| Issuance of 741,607 warrants with short-term debt | | | 459,800 | | | 459,800 |
| Beneficial conversion feature of short-term debt | | | 460,000 | | | 460,000 |
| Issuance of stock options for services provided | | | 118,000 | | | 118,000 |
| Net loss available to common shareholders | | | | | (9,031,444) | (9,031,444) |
| Balance—December 31, 2002 | 6,783,250 | 678 | 1,147,057 | | (12,997,806) | (11,850,071) |
| Exercise of stock options to purchase common stock | 78,950 | 8 | 17,585 | | | 17,593 |
| Accretion of issuance costs—preferred stock | | | | | (29,292) | (29,292) |
| Issuance of stock options for services provided | | | 33,000 | | | 33,000 |
| Net loss available to common shareholders | | | | | (7,108,072) | (7,108,072) |
| Balance—December 31, 2003 | 6,862,200 | 686 | 1,197,642 | | (20,135,170) | (18,936,842) |
| Exercise of stock options to purchase common stock | 282,441 | 28 | 89,155 | | | 89,183 |
| Intrinsic value of stock options granted | | | 1,308,816 | $ (1,308,816) | | |
| Issuance of stock options for services provided | | | 687,000 | | | 687,000 |
| Amortization of intrinsic value of stock options granted | | | | 327,204 | | 327,204 |
| Accretion of issuance costs—preferred stock | | | | | (45,971) | (45,971) |
| Net loss available to common shareholders | | | | | (9,451,868) | (9,451,868) |
| Balance—December 31, 2004 | 7,144,641 | $ 714 | $ 3,282,613 | $ (981,612) | $ (29,633,009) | $ (27,331,294) |

See notes to financial statements.

**ATRICURE, INC.**

**STATEMENTS OF CASH FLOWS**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net loss | $ (9,451,868) | $ (7,108,072) | $ (9,031,444) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Depreciation | 962,355 | 538,048 | 174,193 |
| Loss on disposal of equipment | 16,561 | 15,203 | |
| Stock compensation | 1,014,204 | 33,000 | 118,000 |
| Interest expense from accretion of debt warrants and beneficial conversion feature of short-term debt | | | 919,800 |
| Preferred stock interest | 3,905,169 | 3,905,169 | 2,562,529 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | (1,892,795) | (1,150,845) | (461,581) |
| Inventory | (448,413) | (183,955) | (455,040) |
| Prepaid expenses | 97,482 | (164,496) | (22,768) |
| Other assets | (417,453) | 1,929 | (4,925) |
| Accounts payable | 454,730 | (110,660) | 345,564 |
| Commissions payable | 565,044 | 155,384 | |
| Payroll taxes | 10,982 | (2,459) | (20,537) |
| Accrued liabilities | 1,383,931 | 273,143 | (64,079) |
| Net cash used in operating activities | (3,800,071) | (3,798,611) | (5,940,288) |
| Cash flows from investing activities: | | | |
| Purchases of property and equipment | (1,513,273) | (1,253,634) | (1,221,074) |
| Cash flows from financing activities: | | | |
| Proceeds from stock option exercise | 89,183 | 17,593 | 7,856 |
| Proceeds from issuance of Series B Preferred Stock | | | 17,274,500 |
| Proceeds from issuance of convertible notes payable | | | 3,535,000 |
| Issuance cost for Series B Preferred Stock | | | (96,704) |
| Principal payments on capital lease obligations | | | (15,213) |
| Net cash provided by financing activities | 89,183 | 17,593 | 20,705,439 |
| Net (decrease) increase in cash and cash equivalents | (5,224,161) | (5,034,652) | 13,544,077 |
| Cash and cash equivalents—beginning of year | 10,399,338 | 15,433,990 | 1,889,913 |
| Cash and cash equivalents—end of year | $ 5,175,177 | $ 10,399,338 | $ 15,433,990 |
| Supplemental schedule of non cash investing and financing: | | | |
| Conversion of note and accrued interest to preferred stock | | | $ 3,535,000 |
| Fair value of warrants | | | $ 459,800 |
| Beneficial conversion feature of short-term debt | | | $ 460,000 |
| Supplemental cash flow information: | | | |
| Cash paid for interest | | | $ 1,485 |

See notes to financial statements.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

## 1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

***Nature of the Business***—AtriCure, Inc. (the "Company") was incorporated in the State of Delaware on October 31, 2000, as a spin-off of Enable Medical Corporation, to focus on the surgical treatment of atrial fibrillation. Atrial fibrillation ("AF") is a rapid, irregular quivering of the upper chambers of the heart. The Company sells its medical devices to hospitals and medical clinics both in the United States of America and internationally. International sales were approximately $1,409,000 and $311,000 in 2004 and 2003, respectively. There were no international sales in 2002.

The spin-off transaction which established Atricure as an independent entity was essentially composed of the transfer of personal computers from Enable to AtriCure and certain developing technology was transferred from Enable to AtriCure. In accordance with paragraph 23 of APB 29, the computers were recorded at Enable's carrying value. The developing technology maintained no cost basis as it was developed by Enable's research and development efforts, which were expensed at that time. No liabilities were transferred to Atricure. At the time of the spin-off, no shareholder or group of shareholders maintained 50% or more of the voting shares of either Enable or AtriCure.

***Cash and Cash Equivalents***—The Company considers highly liquid investments with maturities of three months or less at the date of acquisition as cash equivalents for the purposes of the statement of cash flows.

***Revenue Recognition***—Product revenue is recognized when products are shipped to customers, and includes shipping revenue of approximately $87,000, $43,000 and $8,000 in 2004, 2003 and 2002, respectively. Cost of freight is included in cost of goods sold. Commission income is recognized as the related sales are made. Customers and distributors have generally no right of return.

We comply with SEC Staff Accounting Bulletin No. 101, *Recognition in Financial Statements*, or SAB 101, as amended by SAB 104. SAB 101 sets forth guidelines on the timing of revenue recognition based upon factors such as passage of title, installation, payment terms and ability to return products. We recognize revenue when all of the following criteria are met; (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectibility is reasonably assured.

***Inventory***—Inventories consist of finished goods and are stated at the lower of cost or market using the first-in, first-out ("FIFO") cost method.

***Property and Equipment***—Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed on the straight-line method for financial reporting purposes over the estimated useful lives of the assets, which range from three to five years. The Company, using its best estimates based on reasonable and supportable assumptions and projections, reviews for impairment property and equipment in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets.* The Company determined that there was no impairment of property and equipment in 2004, 2003 and 2002, respectively.

Included in Property and Equipment are generators and cryo-units that are loaned at no cost to medical providers to use the Company's product. These generators and cryo-units are depreciated over three years, and such depreciation is included in cost of sales. The total of such depreciation was approximately $543,000, $225,000 and $18,000 for the years ended December 31, 2004, 2003 and 2002, respectively.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

***Earnings (Loss) Per Share***—Net loss per common share is based on the weighted average number of common shares outstanding during each of the respective years. Outstanding options of 4,044,322, 3,508,763 and 3,115,040 in 2004, 2003 and 2002, respectively, have not been included in the computation of basic and dilutive loss per share because they are anti-dilutive, or they would have reduced the net loss per common share. All share and per share amounts reflect the for reverse stock split we intend to effect prior to the closing of this offering.

***Research and Development***— Research and development costs are expensed as incurred.

***Stock-Based Employee Compensation***—The Company accounts for its stock-based awards to employees using the intrinsic value method in accordance with Accounting Principles Board ("APB") No. 25, *Accounting for Stock Issued to Employees*, and its related interpretations. The Company has adopted the pro forma disclosure requirements of SFAS No. 123, *Accounting for Stock-Based Compensation*. Accordingly, compensation expense has been recognized in the financial statements for stock-based awards to employees based on the intrinsic value, if any, of the options issued. In December 2004, the Financial Accounting Standards board ("FASB") issued a revision of SFAS No. 123, *Share-Based Payment* (No. 123R), which is effective for periods beginning after June 15, 2005. Management has not yet determined the impact that the adoption of SFAS No. 123R will have on the Company's financial statements.

SFAS No. 123, requires the disclosure of pro forma net income or loss as if the Company had adopted the fair value method. Under SFAS No. 123, the fair value of stock-based awards to employees is calculated through the use of the option pricing models, even though such models were developed to estimate the fair value of freely tradable, fully transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require subjective assumptions, including expected time to exercise, which greatly affect the calculated values. If the computed fair values of the stock-based awards had been amortized to expense over the vesting period of the awards, the effect would have been as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Net loss available to common shareholders | $(9,451,868) | $(7,108,072) | $(9,031,444) |
| Add: Stock-based employee compensation expense included in net loss, net of related tax effect | 327,204 | — | — |
| Deduct: Stock-based employee compensation expense if the fair market method had been applied, net of related tax effects | (357,000) | (18,000) | (16,000) |
| Pro forma net loss if the fair market method had been applied | $(9,481,664) | $(7,126,072) | $(9,047,444) |
| Net loss per common share: | | | |
| Basic—as reported | $ (1.36) | $ (1.04) | $ (1.34) |
| Basic—pro forma | $ (1.36) | $ (1.05) | $ (1.34) |

In calculating the compensation costs under SFAS No. 123, the fair value of the options is estimated on the grant date using the Black-Scholes option pricing model considering the following weighted average assumptions:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Risk free interest rates | 1.00% to 3.25% | 0.59% to 1.98% | 1.67% to 1.975% |
| Expected lives (years) | 1 - 4 | 1 - 4 | 1 - 4 |
| Volatility | 0.00% | 0.00% | 0.00% |

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

Based on the assumptions noted above, the weighted average fair value of the options granted during the year was as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Weighted average fair value of options granted during the year | $1.78 | $0.03 | $0.02 |

***Use of Estimates***—The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America 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.

***Concentrations of Credit Risk***—The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information.

***Fair Value Disclosures***—The fair value of the Company's assets and liabilities approximates the carrying values.

***Prepaid Legal Costs***—Represents amounts incurred by the Company in anticipation of filing a registration statement in 2005.

***Reclassifications***—Certain 2003 and 2002 balances have been reclassified to be consistent with the classification used in 2004.

**2. STOCK OPTION PLAN**

As of December 31, 2004, 2003 and 2002, 5,100,000, 4,500,000 and 4,500,000 shares, respectively, of the Company's common stock have been reserved for issuance under the 2001 Stock Option Plan (the "Plan").

Under the Plan, the Board of Directors may grant incentive stock options or nonstatutory stock options to purchase shares of the Company's common stock to employees, directors and officers of the Company, or to individuals rendering consulting, advisory or other independent contracting services. The Board of Directors may grant options to purchase the Company's common stock at prices no less than the fair market value at the date of grant for incentive and nonstatutory stock options. In addition, incentive or nonstatutory options may be granted to persons owning more than 10% of the voting power of all classes of stock, at a price not lower than 110% of the fair market value at the date of the grant, as determined by the Board of Directors. Options granted under the Plan generally expire 10 years from the date of grant (5 years for persons owning more than 10% of the voting power of all classes of stock) and vest at a rate of 25% on the first anniversary date and ratably each year thereafter. Certain options are exercisable upon grant and the underlying unvested shares are subject to the Company's repurchase right as stated in the Plan agreement.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

Activity under the Plan is as follows:

| | 2004 Stock Options Outstanding | | 2003 Stock Options Outstanding | | 2002 Stock Options Outstanding | |
|---|---|---|---|---|---|---|
| | Number of Shares Outstanding | Weighted Average Exercise Price | Number of Shares Outstanding | Weighted Average Exercise Price | Number of Shares Outstanding | Weighted Average Exercise Price |
| Outstanding—beginning of year | 3,508,763 | $ 0.32 | 3,115,040 | $ 0.30 | 1,260,050 | $ 0.16 |
| Granted | 963,200 | 0.61 | 826,500 | 0.40 | 2,104,990 | 0.38 |
| Forfeited | (145,200) | 0.48 | (353,827) | 0.39 | (197,625) | 0.30 |
| Exercised | (282,441) | 0.32 | (78,950) | 0.22 | (52,375) | 0.15 |
| Outstanding—end of year | 4,044,322 | $ 0.38 | 3,508,763 | $ 0.32 | 3,115,040 | $ 0.30 |
| Exercisable—end of year | 1,690,344 | | 1,156,090 | | 582,798 | |

At December 31, 2004, 2003 and 2002, there were 571,912, 789,912 and 1,262,225 shares, respectively, available for future grants under the Plan.

Additional information regarding stock options outstanding as of December 31, 2004 is as follows:

| Exercise Prices | Number Outstanding | Weighted Average Remaining Contractual Life (Years) | Exercisable at December 31, 2004 |
|---|---|---|---|
| $0.150 | 624,250 | 6.26 | 506,250 |
| 0.165 | 250,000 | 1.25 | 187,500 |
| 0.500 | 19,000 | 6.92 | 17,750 |
| 1.000 | 21,000 | 7.08 | 10,500 |
| 0.350 | 1,561,500 | 7.82 | 785,750 |
| 0.400 | 1,044,372 | 7.02 | 182,594 |
| 0.550 | 91,000 | 9.42 | |
| 0.700 | 110,200 | 9.59 | |
| 0.850 | 323,000 | 9.79 | |
| | 4,044,322 | | 1,690,344 |

For 2004, additional information regarding the options issued during the year to both employees and non- employees is as follows:

| 2004 | Options Issued | Exercise Price | Fair Value |
|---|---|---|---|
| January 1 to March 31 | 264,000 | $ 0.40 | $ 1.36 |
| April 1 to June 30 | 34,000 | 0.40 | 1.65 |
| April 1 to June 30 | 91,000 | 0.55 | 1.65 |
| July 1 to September 30 | 112,700 | 0.70 | 1.78 |
| October 1 to December 31 | 138,500 | 0.40 | 2.08 |
| October 1 to December 31 | 323,000 | 0.85 | 2.13 |

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

The exercise price was determined by an internally prepared market valuation approved by the audit committee and the full board at the time the shares were issued.

In addition, during 2004 the Company incurred a charge for stock compensation for employees for options issued during 2004 that subsequent to their issuance were determined to have been issued with exercise prices below market value. The Company recorded a charge of $327,204 for these options, which represents the portion pertaining to 2004 based on the options' vesting requirements.

***Stock Compensation***—The Company has issued nonstatutory common stock options to consultants to purchase shares of common stock. Such options vest over a service period ranging from immediately to four years. The fair value, which is subject to adjustment at each vesting date based upon the fair value of the Company's common stock, was determined using the Black-Scholes valuation model with the following weighted average assumptions: contractual life of ten years; volatility 0%; risk-free interest rate ranging from 2.25% to 4.72%; and no dividends during the expected term. The values attributable to these options have been amortized over the service period on a graded vesting method and the vested portion of these options was re-measured at each vesting date.

Stock compensation expense with respect to non-employee awards totaled approximately $687,000, $33,000 and $118,000 in 2004, 2003 and 2002, respectively.

**3. CONVERTIBLE DEBT**

The Company issued a $3,500,000 8% convertible note on April 22, 2002 (maturity date October 22, 2002).

In connection with the convertible note, the Company issued 741,607 warrants. These warrants were valued at $0.62 per warrant. The fair value of $459,800 was credited to additional paid-in capital and charged to debt discount. The discount was amortized to interest expense over the term of the note and was fully amortized when the promissory note was converted upon the issuance of the Series B Preferred Stock in June 2002. All 741,607 warrants remained outstanding at December 31, 2004 at an exercise price of $0.63 per share.

In valuing the stock warrants, the Company considered several factors, including input from an independent appraisal firm. The valuation was perfumed utilizing certain closed-form models such as the Black-Scholes-Merton model and the Bjerksund and Stensland approximation model. The valuation utilized certain pertinent inputs, including the fair market value of the underlying stock, exercise price of the warrants, contractual term, expected dividends, risk-free rate and expected volatility. Using the inputs described above in the closed-form models of Black Scholes, on a probability-weighted basis, it was determined that the fair value of the respective warrants was $0.62.

In addition, the convertible note contained a beneficial conversion feature as described in EITF Issue No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios*, and Issue No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. The intrinsic value assigned to the beneficial conversion feature was $460,000. The intrinsic value was calculated as of the issuance date of the convertible note based on the difference between the effective conversion price in the convertible note ($1.24 per share) and the fair value of the Series B Preferred Stock ($1.43 per share) into which the note was ultimately converted. This value was credited to additional paid-in capital and charged to debt discount. The debt discount was amortized to interest expense over the term of the note with the remaining unamortized balance recognized as interest expense in June 2002 when the note was converted into Series B Preferred Stock.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

## 4. REDEEMABLE PREFERRED STOCK

In 2001, the Company issued 8,293,579 shares of Series A Preferred Stock at $0.63 per share. In exchange for the Series A Preferred Stock, the Company received $4,025,000 in cash and converted a $1,150,000 promissory note that was issued in January 2001 and the related accrued interest of $49,958. The proceeds were reduced by $131,426 in direct expenses associated with this offering. Amortization on the direct issuance expenses was $23,572, $16,428 and $9,583 during 2004, 2003 and 2002, respectively.

In 2002, the Company issued 14,552,097 shares of Series B Preferred Stock at $1.43 per share. In exchange for the Series B Preferred Stock, the Company received $17,274,500 in cash and converted the $3,500,000 note discussed in Note 3 and the related accrued interest of $35,000. The proceeds were reduced by $96,704 in direct expenses associated with this offering. Amortization of the direct issuance expenses was $22,399, $12,864 and $7,051 in 2004, 2003 and 2002, respectively.

The Series A and B Preferred Stock have a liquidation preference that provides for the distribution of $0.63 per share (Series A) and $1.43 per share (Series B) plus all dividends accrued or declared thereon but unpaid on each share outstanding at the time of liquidation.

The Series A Preferred Stock has dividend preferences at a rate of $0.0504 per share, per annum on declared dividends. The Series B Preferred Stock has a dividend preference at a rate of $0.1144 per share, per annum on declared dividends. Dividends on Preferred Stock must be paid before any other dividends can be declared or paid on any other class of common stock. Dividends are non-cumulative. No dividends were declared by the Company's Board of Directors during 2004, 2003 or 2002.

Each share of Series A and B Preferred Stock is convertible by the holders into common stock of the Company at any time after the date of issuance. The number of shares of common stock that would be received upon conversion is determined by dividing $0.63 by the Series A conversion price and $1.43 by the Series B conversion price (original issue price subject to adjustments as specified in the Company's Certificate of Incorporation) in effect at the time of conversion. In addition, upon conversion, the holder of each share of Series A or B Preferred Stock will receive cash in an amount equal to all dividends declared but unpaid and any and all other amounts owing with respect to the Series A or B Preferred Stock. As of December 31, 2004 and 2003, no Series A or B Preferred Stock was converted.

The holders of at least two-thirds of the then issued and outstanding shares of Series A or a majority of the then issued and outstanding shares of Series B Preferred Stock may cause the Company, beginning on June 6, 2007, and on each of the first and second anniversaries thereof, to redeem from the holders of the Series A or B Preferred Stock at a price equal to the original Series A or B Preferred Stock purchase price plus all declared or accrued but unpaid dividends and an amount equal to 15% per annum (by simple interest calculation) of the original Series A or B per share purchase price from the date of May 25, 2001 (Series A) and June 6, 2002 (Series B), through and until the redemption date. The 15% rate is payable only if the Series A or B Preferred Stock is redeemed. If the Series A or B Preferred Stock is converted prior to redemption, no amount is due for the 15% rate. Pursuant to their terms, the Series A and B Preferred Stock will be converted into shares of our common stock on a one-for-one basis upon completion of a public offering in which the Company receives gross proceeds of at least $35,000,000.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

Increases in the cumulative Series A preferred stock, as shown in the accompanying balance sheets, for the 15% rate is approximately $2,819,800 and $2,036,000 at December 31, 2004 and 2003, respectively. Increases in the Series B preferred stock, as shown in the accompanying balance sheets, for the 15% rate is approximately $8,021,000 and $4,900,000 at December 31, 2004 and 2003, respectively. The Series A and Series B Preferred Stock are redeemable as follows:

| Redemption Date | Portion of Shares of Series A and B Redeemable Preferred Stock |
|---|---|
| June 6, 2007 | 33 1/3% |
| June 6, 2008 | 66 2/3% |
| June 6, 2009 | 100% |

**5. INCOME TAXES**

Deferred income tax assets and liabilities are computed annually for differences between the financial statement and tax bases of assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities.

Deferred tax assets result from an operating loss carryforward and research and development credits. The detail of deferred tax assets and liabilities is as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Net operating loss carryforward | $ 5,544,000 | $ 4,093,000 | $ 3,001,000 |
| Research and development credit carryforward | 585,000 | 382,000 | 256,000 |
| Stock compensation | 111,000 | | |
| Other-net | 28,000 | (162,000) | 224,000 |
| Sub total | 6,268,000 | 4,313,000 | 3,481,000 |
| Less valuation allowance | (6,268,000) | (4,313,000) | (3,481,000) |
| Total | $ — | $ — | $ — |

At December 31, 2004, 2003 and 2002, the Company recorded a valuation allowance of approximately $6,268,000, $4,313,000 and $3,481,000, respectively, due to the uncertainty of when these assets may be realized.

The benefit for income taxes is as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Deferred tax benefit | $(1,956,000) | $(832,000) | $(1,930,000) |
| Increase in valuation allowance | 1,956,000 | 832,000 | 1,930,000 |
| Total | $ — | $ — | $ — |

The Company has a net operating loss carryforward of approximately $16,307,000 which will begin to expire in 2021. The Company also has a research and development credit carryforward of approximately $585,000 which will begin to expire in 2021.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

## 6. RELATED PARTY

The Company transacts business with Enable Medical Corporation ("Enable"), a related party by common ownership.

In November 2000, the Company entered into a rental and administrative services agreement with Enable whereby, the Company obtains access and use of facility, personnel and systems from Enable. This agreement expired in January 2003. In January 2002 (amended in 2003), the Company entered into a master development, manufacturing and supply agreement with Enable. Pursuant to the terms of the development, manufacturing and supply agreement with Enable, the Company was required to pay Enable a monthly fee of at least $96,000 for certain product development services during the period from February 1, 2003 to January 31, 2004. After January 31, 2004 there is no specified monthly fee requirement. The agreement expired in January 2005, but was extended to December 2005 in February 2005.

## 7. COMMITMENTS

The Company rents its office facility under a five-year lease expiring in May 2009. The operating lease provides for annual lease payments of the following at December 31, 2004:

| | |
|---|---|
| 2005 | $ 117,222 |
| 2006 | 117,222 |
| 2007 | 117,222 |
| 2008 | 117,222 |
| 2009 | 48,842 |

Rent expense was approximately $98,600, $75,300 and $66,300 for December 31, 2004, 2003 and 2002, respectively.

In December 2003, the Company entered into a two-year development agreement with Stellartech whereby Stellartech agreed to develop enhancements to the current ASU technology and granted the Company a royalty-free license to use Stellartech's technology in the field of cardiac arrhythmia treatment. The Company may terminate this agreement upon 30 days' notice. Under the terms of this agreement, the Company and Stellartech have certain indemnification obligations, including with respect to claims relating to intellectual property infringement or misappropriation. In December 2003, the Company also entered into a manufacturing agreement with Stellartech whereby it agreed to purchase, and Stellartech agreed to supply, specified minimum quantities of the Company's ASU. This agreement has an initial five-year term that renews for successive one-year periods, unless terminated. This manufacturing agreement may be terminated by Stellartech for any reason upon six months' notice to AtriCure. The Company may terminate the agreement in the event the development agreement is terminated prior to expiration or after the Company has fulfilled certain purchase requirements under the agreement. Any supply interruption or failure to obtain the Company's ASU would limit its ability to sell its system and could have a material adverse effect on the Company's business, financial condition and results of operations.

## 8. PROFIT SHARING PLAN

The Company sponsors a defined contribution savings and profit sharing retirement plan. Eligible employees may contribute up to 15% of their eligible compensation. For every dollar contributed by a participant, the Company will match a fixed percentage set prior to the end of the fiscal year (50% of the first 6% for 2004, 2003 and 2002, respectively). The Company may also make discretionary contributions. Total Company matching and discretionary contributions charged to expense were approximately $107,700, $75,000 and $36,000 in 2004, 2003 and 2002, respectively.

**ATRICURE, INC.**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004, 2003 and 2002**

## 9. SUBSEQUENT EVENTS

The Company entered into an agreement and plan of merger effective February 14, 2005 by which the Company agreed to purchase all of Enable Medical Corporation's ("Enable") outstanding shares. As noted in Note 6, Enable is a related party to the Company. The agreement to acquire Enable is contingent on the Company completing an initial public offering ("IPO") of its common stock, in which the Company realizes gross proceeds of at least $35,000,000.

The aggregate consideration to be paid by the Company for Enable will be $6,500,000 if the outstanding shares are purchased on or prior to July 1, 2005; if the shares are purchased after July 1, 2005 but prior to December 31, 2005, when the agreement expires, the total consideration will be $7,000,000. In February 2005, the Company made an advance payment of a portion of the purchase price in the amount of $500,000. This amount is not refundable unless the agreement is terminated due to a breach by Enable.

In March 2005 the Company entered into an agreement for a credit facility up to $5,000,000, to be drawn down by the earlier of an IPO or September 1, 2005. This credit facility is secured by substantially all of the Company's assets, excluding intellectual property. The interest rate for any amounts drawn down will be the prime rate plus 1.75%. Under the terms of the agreement, we are required to pay monthly installments of interest only through August 2005 and monthly installments of principal and interest thereafter, in addition to a fee due at maturity on September 1, 2009 equal to 15% of the aggregate amount borrowed under the credit facility, with prepayment in whole allowed at any time without penalty.

The Company may use proceeds from our IPO to repay any amounts borrowed under the credit facility, plus interest and a fee equal to 15% of the amount borrowed under the credit facility. In addition, the agreement required the Company to issue to the lender 209,790 warrants to purchase common stock, at an exercise price of $2.97 per share. The warrants shall expire the earlier of seven years after the date of issuance, or one year after the closing of the initial public offering.

******

**ATRICURE, INC.**

**CONDENSED BALANCE SHEET**
**(Unaudited)**

| | March 31, 2005 |
|---|---|
| **Assets** | |
| Current assets: | |
| Cash and cash equivalents | $ 2,451,592 |
| Accounts receivable, less allowance for doubtful accounts of $56,779 | 4,396,847 |
| Inventory | 1,050,363 |
| Prepaid expenses | 201,159 |
| Advance payment for acquisition of company | 500,000 |
| Total current assets | 8,599,961 |
| Property and equipment, net | 2,561,470 |
| Prepaid legal costs | 1,018,161 |
| Other assets | 228,286 |
| Total assets | $ 12,407,878 |
| **Liabilities and shareholders' deficit** | |
| Current liabilities: | |
| Accounts payable (a) | $ 1,103,501 |
| Commissions payable | 722,651 |
| Accrued liabilities | 2,156,384 |
| Total current liabilities | 3,982,536 |
| Redeemable preferred stock: | |
| Preferred stock, $0.0001 par value; designated Series A, 8,293,579 shares authorized, issued and outstanding as of March 31, 2005 | 8,180,369 |
| Preferred stock, $0.0001 par value; designated Series B, 15,426,936 shares authorized; 14,552,097 issued and outstanding as of March 31, 2005 | 29,561,377 |
| Total redeemable preferred stock | 37,741,746 |
| Shareholders' deficit: | |
| Common stock, $0.0001 par value, 40,000,000 shares authorized, 7,162,641 shares issued and outstanding as of March 31, 2005 | 716 |
| Additional paid-in capital | 3,336,608 |
| Unearned compensation | (645,224) |
| Accumulated deficit | (32,008,504) |
| Total shareholders' deficit | (29,316,404) |
| Total liabilities and shareholders' deficit | $ 12,407,878 |

*(a) Includes the following liabilities resulting from transactions with related parties:*

| | |
|---|---|
| *Accounts payable* | *$ 821,438* |

See notes to financial statements

**ATRICURE, INC.**

**CONDENSED STATEMENTS OF OPERATIONS**
**(Unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | **2005** | **2004** |
| Revenues: | | |
| Sale of products | $ 7,489,724 | $ 3,797,703 |
| Commissions | 8,035 | 4,655 |
| Total revenues | 7,497,759 | 3,802,358 |
| Cost of revenues(a) | 1,919,512 | 1,090,042 |
| Gross profit | 5,578,247 | 2,712,316 |
| Expenses: | | |
| Research and development expenses(a) | 1,736,836 | 983,964 |
| Selling, general and administrative expenses | 5,252,098 | 2,911,509 |
| Total expenses | 6,988,934 | 3,895,473 |
| Loss from operations | (1,410,687) | (1,183,157) |
| Preferred stock interest expense | 976,292 | 976,292 |
| Other interest income (expense), net | 20,801 | 29,068 |
| Net loss available to common shareholders | $ (2,366,178) | $ (2,130,381) |
| Basic and diluted loss per share | $ (0.33) | $ (0.31) |
| Weighted average shares outstanding: | | |
| Basic and diluted | 7,149,858 | 6,862,200 |

*(a) Includes the following expenses resulting from transactions with related parties:*

| | | |
|---|---|---|
| *Cost of revenue* | *$ 1,621,470* | *$ 1,286,481* |
| *Research and development expenses* | *$ 382,635* | *$ 192,291* |

See notes to financial statements

**ATRICURE, INC.**

**CONDENSED STATEMENTS OF CASH FLOWS**
**(Unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Cash flows from operating activities: | | |
| Net loss | $ (2,366,178) | $ (2,130,381) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation | 298,650 | 169,142 |
| Stock compensation | 169,451 | 342,888 |
| Preferred stock interest | 976,292 | 976,292 |
| Changes in assets and liabilities: | | |
| Accounts receivable | (876,226) | (391,601) |
| Inventory | 37,045 | (332,839) |
| Prepaid expenses | (88,419) | 105,580 |
| Other assets | (605,741) | (2,052) |
| Accounts payable | 370,057 | 467,653 |
| Commissions payable | (68,988) | 47,170 |
| Accrued liabilities | 375,694 | 199,486 |
| Net cash used in operating activities | (1,778,363) | (548,662) |
| Cash flows from investing activities: | | |
| Purchases of property & equipment | (450,072) | (318,190) |
| Advance payments for acquisition of company | (500,000) | — |
| Net cash used in investing activities | (950,072) | (318,190) |
| Cash flow from financing activities: | | |
| Proceeds from stock option exercise | 4,850 | — |
| Net decrease in cash and cash equivalents | (2,723,585) | (866,852) |
| Cash and cash equivalents — beginning of period | 5,175,177 | 10,399,338 |
| Cash and cash equivalents — end of period | $ 2,451,592 | $ 9,532,486 |
| Supplemental cash flow information: | | |
| Warrants issued in connection with line of credit | $ 216,083 | |

See notes to financial statements

**ATRICURE, INC.**

**NOTES TO CONDENSED FINANCIAL STATEMENTS**
**March 31, 2005**
**(Unaudited)**

## 1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

***Nature of the Business***—AtriCure, Inc. (the "Company") was incorporated in the State of Delaware on October 31, 2000, as a spin-off of Enable Medical Corporation, to focus on the surgical treatment of atrial fibrillation. Atrial fibrillation ("AF") is a rapid, irregular quivering of the upper chambers of the heart. The Company sells its medical devices to hospitals and medical clinics both in the United States of America and internationally. International sales were approximately $927,000 and $156,000 for the three months ended March 31, 2005 and 2004, respectively.

***Basis of Presentation***—The accompanying interim financial statements have been prepared in accordance with the rules and regulations of Securities and Exchange Commission. The accompanying interim financial statements are unaudited, but in the opinion of management, contain all the normal, recurring adjustments considered necessary to present fairly the financial position, results of operations and cash flows for the periods presented in conformity with generally accepted accounting principles applicable to interim periods. Results of operations are not necessarily indicative of the results expected for the full fiscal year or for any future period.

The accompanying condensed financial statements should be read in conjunction with the audited financial statements of the Company included in this prospectus.

***Cash and Cash Equivalents***—The Company considers highly liquid investments with maturities of three months or less at the date of acquisition as cash equivalents for the purposes of the statement of cash flows.

***Revenue Recognition***—Product revenue is recognized when products are shipped to customers, and includes shipping revenue of approximately $33,000 and $16,000 for the three months ended March 31, 2005 and 2004, respectively. Cost of freight is included in cost of goods sold. Commission income is recognized as the related sales are made. Customers and distributors generally have no right of return.

We comply with SEC Staff Accounting Bulletin No. 101, *Recognition in Financial Statements*, or SAB 101, as amended by SAB 104. SAB 101 sets forth guidelines on the timing of revenue recognition based upon factors such as passage of title, installation, payment terms and ability to return products. We recognize revenue when all of the following criteria are met; (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectibility is reasonably assured.

***Inventory***—Inventories consist of finished goods and are stated at the lower of cost or market using the first-in, first-out ("FIFO") cost method.

***Property and Equipment***—Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed on the straight-line method for financial reporting purposes over the estimated useful lives of the assets, which range from three to five years.

Included in Property and Equipment are generators and cryo-units that are loaned at no cost to medical providers to use the Company's product. These generators and cryo-units are depreciated over three years, and such depreciation is included in cost of sales. The total of such depreciation was approximately $170,000 and $105,000 for the three months ended March 31, 2005 and 2004, respectively.

**ATRICURE, INC.**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**
**(Unaudited)**

***Loss Per Share***—Net loss per common share is based on the weighted average number of common shares outstanding during the period. Outstanding options have not been included in the computation of basic and dilutive loss per share because they are anti-dilutive, or they would have reduced the net loss per common share. All share and per share amounts reflect the for reverse stock split we intend to effect prior to the closing of this offering.

***Research and Development***— Research and development costs are expensed as incurred.

***Stock-Based Employee Compensation***—The Company accounts for its stock-based awards to employees using the intrinsic value method in accordance with Accounting Principles Board ("APB") No. 25, *Accounting for Stock Issued to Employees*, and its related interpretations. The Company has adopted the pro forma disclosure requirements of SFAS No. 123, *Accounting for Stock-Based Compensation*. Accordingly, compensation expense has been recognized in the financial statements for stock-based awards to employees based on the intrinsic value, if any, of the options issued. In December 2004, the Financial Accounting Standards Board ("FASB") issued a revision of SFAS No. 123, *Share-Based Payment* (No. 123R), which is effective for periods beginning after June 15, 2005. Management has not yet determined the impact that the adoption of SFAS No. 123R will have on the Company's financial statements.

SFAS No. 123, requires the disclosure of pro forma net income or loss as if the Company had adopted the fair value method. Under SFAS No. 123, the fair value of stock-based awards to employees is calculated through the use of the option pricing models, even though such models were developed to estimate the fair value of freely tradable, fully transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require subjective assumptions, including expected time to exercise, which greatly affect the calculated values. If the computed fair values of the stock-based awards had been amortized to expense over the vesting period of the awards, the effect would have been as follows:

| | Three months ended | |
|---|---|---|
| | March 31, 2005 | March 31, 2004 |
| Net loss available to common shareholders | $ (2,366) | $ (2,130) |
| Add: Stock-based employee compensation expense included in net loss, net of related tax effect | 58 | 74 |
| Deduct: Stock-based employee compensation expense if the fair market method had been applied, net of related tax effects | (149) | (89) |
| Pro forma net loss if the fair market method had been applied | $ (2,457) | $ (2,145) |
| Net loss per common share: | | |
| Basic—as reported | $ (0.33) | $ (0.31) |
| Basic—pro forma | $ (0.34) | $ (0.31) |

In calculating the compensation costs under SFAS No. 123, the fair value of the options is estimated on the grant date using the Black-Scholes option pricing model considering the following weighted average assumptions:

| | Three Months Ended | |
|---|---|---|
| | March 31, 2005 | March 31, 2004 |
| Risk free interest rates | 1.00% to 3.75% | 1.00% to 3.16% |
| Expected lives (years) | 1 – 4 | 1 – 4 |
| Volatility | 0.00% | 0.00% |

**ATRICURE, INC.**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**
**(Unaudited)**

Based on the assumptions noted above, the weighted average fair value of the options granted for the three months ended March 31, 2005 and 2004 was as follows:

| | Three Months Ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Weighted average fair value of options granted | $ 1.34 | $ 1.35 |

***Use of Estimates***—The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America 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.

***Concentrations of Credit Risk***—The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information.

***Fair Value Disclosures***—The fair value of the Company's assets and liabilities approximates the carrying values.

***Prepaid Legal Costs***—Represents amounts incurred by the Company in anticipation of filing a registration statement in 2005.

***Stock-Based Compensation***—The Company has issued nonstatutory common stock options to consultants to purchase shares of common stock. Such options vest over a service period ranging from immediately to four years. The fair value, which is subject to adjustment at each vesting date based upon the fair value of the Company's common stock, was determined using the Black-Scholes valuation model with the following weighted average assumptions: contractual life of ten years; volatility 0%; risk-free interest rate ranging from 2.58% to 3.75% and no dividends during the expected term. The values attributable to these options have been amortized over the service period on a graded vesting method and the vested portion of these options was re-measured at each vesting date.

Stock compensation expense with respect to non-employee awards totaled approximately $111,000 and $269,000 for the three months ended March 31, 2005 and 2004, respectively.

In addition, during 2004 and 2005 the Company incurred a charge for stock compensation for employees for options issued during 2004 and 2005 that subsequent to their issuance were determined to have been issued with exercise prices below market value. The Company recorded a charge of $58,150 and $73,688 for these options for the three months ended March 31, 2005 and 2004, respectively, which represents the portion pertaining to the first quarter 2005 and 2004 based on the options' vesting requirements.

## 2. ENABLE MEDICAL CORPORATION ACQUISITION

The Company entered into an agreement and plan of merger effective February 14, 2005 by which the Company agreed to purchase all of Enable Medical Corporation's ("Enable") outstanding shares. As noted in Note 5, Enable is a related party to the Company. The agreement to acquire Enable is contingent on the Company completing an initial public offering ("IPO") of its common stock, in which the Company realizes gross proceeds of at least $35,000,000.

**ATRICURE, INC.**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**
**(Unaudited)**

The consideration to be paid by the Company for Enable will be $6,500,000 if the outstanding shares are purchased on or prior to July 1, 2005; if the shares are purchased after July 1, 2005 but prior to December 31, 2005, when the agreement expires, the total consideration will be $7,000,000. In February 2005, the Company made an advance payment of a portion of the purchase price in the amount of $500,000. This amount is not refundable unless the agreement is terminated due to a breach by Enable.

## 3. FINANCING ARRANGEMENTS

In March 2005 the Company entered into an agreement for a credit facility up to $5,000,000, to be drawn down by the earlier of an IPO or September 1, 2005. This credit facility is secured by substantially all of the Company's assets, excluding intellectual property. The interest rate for any amounts drawn down will be the prime rate plus 1.75%. Under the terms of the agreement, we are required to pay monthly installments of interest only through August 2005 and monthly installments of principal and interest thereafter, in addition to a fee due at maturity on September 1, 2009 equal to 15% of the aggregate amount borrowed under the credit facility, with prepayment in whole allowed at any time without penalty.

The Company may use proceeds from our IPO to repay any amounts borrowed under the credit facility, plus interest and a fee equal to 15% of the amount borrowed under the credit facility. As of March 31, 2005 there were no amounts outstanding under this facility. In addition, the agreement required the Company to issue to the lender 209,790 warrants to purchase common stock, at an exercise price of $2.97 per share. The warrants shall expire the earlier of 7 years after the date of issuance, or 1 year after the closing of the initial public offering. The warrants were valued with the assistance of an independent appraisal firm at $1.03 which has been recorded as deferred financing costs and will be amortized over the life of the credit facility.

## 4. REDEEMABLE PREFERRED STOCK

In 2001, the Company issued 8,293,579 shares of Series A Preferred Stock at $0.63 per share. In exchange for the Series A Preferred Stock, the Company received $4,025,000 in cash and converted a $1,150,000 promissory note that was issued in January 2001 and the related accrued interest of $49,958. The proceeds were reduced by $131,426 in direct expenses associated with this offering. Amortization on the direct issuance expenses was $5,036 and $4,112 for the three months ended March 31, 2005 and 2004, respectively.

In 2002, the Company issued 14,552,097 shares of Series B Preferred Stock at $1.43 per share. In exchange for the Series B Preferred Stock, the Company received $17,274,500 in cash and converted the $3,500,000 note and the related accrued interest of $35,000. The proceeds were reduced by $96,704 in direct expenses associated with this offering. Amortization of the direct issuance expenses was $4,276 and $2,998 for the three months ended March 31, 2005 and 2004, respectively.

The Series A and B Preferred Stock have a liquidation preference that provides for the distribution of $0.63 per share (Series A) and $1.43 per share (Series B) plus all dividends accrued or declared thereon but unpaid on each share outstanding at the time of liquidation.

The Series A Preferred Stock has dividend preferences at a rate of $0.0504 per share, per annum on declared dividends. The Series B Preferred Stock has a dividend preference at a rate of $0.1144 per share, per annum on declared dividends. Dividends on Preferred Stock must be paid before any other dividends can be declared or paid on any other class of common stock. Dividends are non-cumulative. No dividends were declared by the Company's Board of Directors during 2004 or during the first three month of 2005.

**ATRICURE, INC.**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**
**(Unaudited)**

Each share of Series A and B Preferred Stock is convertible by the holders into common stock of the Company at any time after the date of issuance. The number of shares of common stock that would be received upon conversion is determined by dividing $0.63 by the Series A conversion price and $1.43 by the Series B conversion price (original issue price subject to adjustments as specified in the Company's Certificate of Incorporation) in effect at the time of conversion. In addition, upon conversion, the holder of each share of Series A or B Preferred Stock will receive cash in an amount equal to all dividends declared but unpaid and any and all other amounts owing with respect to the Series A or B Preferred Stock. As of March 31, 2005, no Series A or B Preferred Stock was converted.

The holders of at least two-thirds of the then issued and outstanding shares of Series A or a majority of the then issued and outstanding shares of Series B Preferred Stock may cause the Company, beginning on June 6, 2007, and on each of the first and second anniversaries thereof, to redeem from the holders of the Series A or B Preferred Stock at a price equal to the original Series A or B Preferred Stock purchase price plus all declared or accrued but unpaid dividends and an amount equal to 15% per annum (by simple interest calculation) of the original Series A or B per share purchase price from the date of May 25, 2001 (Series A) and June 6, 2002 (Series B), through and until the redemption date. The 15% rate is payable only if the Series A or B Preferred Stock is redeemed. If the Series A or B Preferred Stock is converted prior to redemption, no amount is due for the 15% rate. Pursuant to their terms, the Series A and B Preferred Stock will be converted into shares of our common stock on a one-for-one basis upon completion of a public offering in which the Company receives gross proceeds of at least $35,000,000.

Increases in the cumulative Series A and Series B preferred stock, as shown in the accompanying March 31, 2005 balance sheet, for the 15% rate is approximately $195,935 and $780,357, respectively. The Series A and Series B Preferred Stock is redeemable as follows:

| Redemption Date | Portion of Shares of Series A and B Redeemable Preferred Stock |
|---|---|
| June 6, 2007 | 33 1/3% |
| June 6, 2008 | 66 2/3% |
| June 6, 2009 | 100% |

## 5. RELATED PARTY

The Company transacts business with Enable Medical Corporation ("Enable"), a related party by common ownership.

In November 2000, the Company entered into a rental and administrative services agreement with Enable whereby, the Company obtains access and use of facility, personnel and systems from Enable. This agreement expired in January 2003. In January 2002 (amended in 2003), the Company entered into a master development, manufacturing and supply agreement with Enable. Pursuant to the terms of the development, manufacturing and supply agreement with Enable, the Company was required to pay Enable a monthly fee of at least $96,000 for certain product development services during the period from February 1, 2003 to January 31, 2004. After January 31, 2004 there is no specified monthly fee requirement. The agreement expired in January 2005, but was extended to December 2005 in February 2005.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Enable Medical Corporation
Cincinnati, Ohio

We have audited the accompanying balance sheets of Enable Medical Corporation as of December 31, 2004 and 2003, and the related statements of income and shareholders' equity and of cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of Enable Medical Corporation as of December 31, 2004 and 2003, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

April 12, 2005

**ENABLE MEDICAL CORPORATION**

**BALANCE SHEETS**
**DECEMBER 31, 2004 AND 2003**

| | 2004 | 2003 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 1,553,077 | $ 422,436 |
| Accounts receivable(a), less allowance for doubtful accounts of $0 in 2004 and $16,218 in 2003 | 412,695 | 485,057 |
| Inventory | 646,454 | 566,853 |
| Prepaid expenses | 20,165 | 38,981 |
| Income tax receivable | | 99,205 |
| Deferred income taxes | 73,000 | 105,792 |
| Total current assets | 2,705,391 | 1,718,324 |
| Property and equipment: | | |
| Machinery and equipment | 996,186 | 909,508 |
| Computers and other office equipment | 361,749 | 345,216 |
| Furniture and fixtures | 33,895 | 33,895 |
| Leasehold improvements | 302,656 | 209,035 |
| Equipment under capital lease | 248,091 | 195,687 |
| Total | 1,942,577 | 1,693,341 |
| Less accumulated depreciation | (1,482,158) | (1,303,776) |
| Property and equipment, net | 460,419 | 389,565 |
| Other assets—deposits | 10,631 | 10,000 |
| Total assets | $ 3,176,441 | $ 2,117,889 |
| **Liabilities and shareholders' equity** | | |
| Current liabilities: | | |
| Current portion of capital lease obligations | $ 26,913 | $ 17,527 |
| Dividends payable | 500,000 | |
| Accounts payable | 350,946 | 268,492 |
| Accrued payroll and related withholdings | 110,799 | 134,873 |
| Other accrued liabilities | 35,663 | 31,286 |
| Income taxes payable | 193,276 | |
| Total current liabilities | 1,217,597 | 452,178 |
| Capital lease obligations | 8,607 | 13,941 |
| Deferred income taxes | 59,000 | 40,664 |
| Shareholders' equity: | | |
| Common Stock, $.01 par value, 10,000,000 shares authorized; 6,661,375 shares issued and outstanding at December 31, 2004 and 2003 | 66,614 | 66,614 |
| Additional paid-in capital | 563,761 | 563,761 |
| Retained earnings | 1,260,862 | 980,731 |
| Total shareholders' equity | 1,891,237 | 1,611,106 |
| Total liabilities and shareholders' equity | $ 3,176,441 | $ 2,117,889 |

*(a) Includes the following assets resulting from transactions with related parties:*

| | | |
|---|---|---|
| *Accounts receivable* | *$ 376,000* | *$ 221,000* |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**STATEMENTS OF INCOME**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

| | 2004 | 2003 |
|---|---|---|
| Revenues: | | |
| Sales of products(a) | $ 5,395,594 | $ 2,986,219 |
| Product development(a) | 1,228,659 | 1,314,350 |
| Government grant for product development | 310,857 | 290,720 |
| Total revenues | 6,935,110 | 4,591,289 |
| Cost of revenues: | | |
| Product sales | 3,446,772 | 2,311,823 |
| Billable research and development costs | 1,332,513 | 865,801 |
| Total cost of revenues | 4,779,285 | 3,177,624 |
| Gross profit | 2,155,825 | 1,413,665 |
| Expenses: | | |
| Selling, general and administrative expenses | 980,778 | 744,958 |
| Interest, net | 3,916 | 5,385 |
| Total expenses | 984,694 | 750,343 |
| Income before provision for income taxes | 1,171,131 | 663,322 |
| Income tax expense | 391,000 | 315,361 |
| Net income | $ 780,131 | $ 347,961 |
| Earnings per common share: | | |
| Basic | $ 0.12 | $ 0.05 |
| Diluted | $ 0.10 | $ 0.05 |
| Weighted average shares outstanding: | | |
| Basic | 6,661,375 | 6,661,375 |
| Diluted | 7,824,875 | 7,454,575 |

(a) *Includes the following revenue resulting from transactions with related parties:*

| | | |
|---|---|---|
| *Sales of product* | *$ 4,941,341* | *$ 2,568,407* |
| *Product development* | *$ 1,228,659* | *$ 981,593* |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**STATEMENTS OF SHAREHOLDERS' EQUITY**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

| | Common Stock | Paid-In Capital | Retained Earnings | Total |
|---|---|---|---|---|
| Balance—December 31, 2002 | $ 66,614 | $ 563,761 | $ 632,770 | $ 1,263,145 |
| Net income | | | 347,961 | 347,961 |
| Balance—December 31, 2003 | 66,614 | 563,761 | 980,731 | 1,611,106 |
| Net income | | | 780,131 | 780,131 |
| Dividend | | | (500,000) | (500,000) |
| Balance—December 31, 2004 | $ 66,614 | $ 563,761 | $ 1,260,862 | $ 1,891,237 |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**STATEMENTS OF CASH FLOWS**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

| | 2004 | 2003 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | $ 780,131 | $ 347,961 |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities: | | |
| Depreciation | 178,382 | 160,166 |
| Deferred income taxes | 51,128 | (8,096) |
| Changes in assets and liabilities: | | |
| Accounts receivable | 72,362 | (321,685) |
| Income tax receivable/payable | 292,481 | (236,558) |
| Inventory | (79,601) | (138,875) |
| Prepaid expenses | 18,816 | (15,355) |
| Deposits | (631) | 2,435 |
| Accounts payable | 111,623 | 222,431 |
| Accrued liabilities | (48,866) | (13,750) |
| Net cash provided by (used in) operating activities | 1,375,825 | (1,326) |
| Cash flows from investing activities: | | |
| Purchases of property and equipment | (199,898) | (62,510) |
| Net cash used in investing activities | (199,898) | (62,510) |
| Cash flows from financing activities: | | |
| Principal payments on capital lease obligations | (45,286) | (35,310) |
| Net cash used in financing activities | (45,286) | (35,310) |
| Net increase (decrease) in cash and cash equivalents | 1,130,641 | (99,146) |
| Cash and cash equivalents—beginning of year | 422,436 | 521,582 |
| Cash and cash equivalents—end of year | $1,553,077 | $ 422,436 |
| Supplemental disclosures of cash flow information: | | |
| Cash paid during the period for interest | $ 8,120 | $ 5,494 |
| Income taxes paid—net | $ 53,000 | $ 586,000 |
| Supplemental schedule of noncash investing and financing activities: | | |
| Property and equipment purchased through capital leases | $ 49,338 | |
| Dividends declared and payable | $ 500,000 | |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

## 1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

***Nature of the Business***—Enable Medical Corporation (the "Company") was incorporated in the State of Delaware on April 11, 1994 and began production of products for sale in 1998.

***Segment Information***—The Company operates and is managed under a single operating segment which is comprised of two business units, Enable Surgical Products and Enable Design and Manufacturing. The Surgical Products unit is engaged in the research and development of RF energy based products for surgery. The Surgical Products unit is currently distributing a line of bipolar scissors used in general surgery, cardiovascular surgery, gynecology, urology, otolaryngology, and plastic/cosmetic surgery. This line is being marketed in the United States, Europe, and Asia. The Surgical Products unit has a portfolio of RF technologies covered by U.S. and European patents that are being considered for licensing and/or commercialization by the Company. The Design and Manufacturing unit provides contract design, research and development and manufacturing services to AtriCure, Inc. (see Note 5) and other medical device companies.

***Cash and Cash Equivalents***—The Company considers highly liquid investments with maturities of three months or less at the date of acquisition as cash equivalents for the purposes of the statements of cash flows.

***Revenue Recognition***—Product sales revenue is recognized when title to the goods and risk of loss transfer to customers and there are no remaining obligations that will affect the customer's final acceptance of the sale. The Company's standard sales terms define the transfer of title and risk of loss to occur upon shipment to the respective customer.

Enable maintains no post-shipping obligations to the recipients of the respective equipment. Enable does not accept product returns unless the products are damaged in shipment or deemed substandard by the customer's quality control department.

Product development revenue is recognized as contract costs are incurred. The achievement of milestones is not required under the agreement as revenue is earned by Enable's ongoing research and development activities. The Company received research grants through the National Institutes of Health. Grant revenue is recognized as funds are expended and not as awarded by awarding agencies.

***Inventory***—Inventories are stated at the lower of cost or market using the first-in, first-out ("FIFO") cost method. Inventories consist of the following at December 31, 2004 and 2003:

| | 2004 | 2003 |
|---|---|---|
| Raw materials | $263,262 | $150,237 |
| Work in process | 236,572 | 272,167 |
| Finished goods | 163,706 | 154,977 |
| Reserve for obsolescence | (17,086) | (10,528) |
| | $646,454 | $566,853 |

***Property and Equipment***—Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed on the straight-line method for financial reporting purposes over the estimated useful lives of the assets, which range from three to seven years. The Company, using its best estimates based on reasonable and supportable assumptions and projections, reviews for impairment property and equipment in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets.* The Company determined that there was no impairment of property and equipment in 2004 and 2003, respectively.

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

***Earnings per share***—Earnings per common share ("EPS") is based on the weighted average number of common shares outstanding during each of the respective years. The calculation of net income per common share (diluted) assumes the exercise of stock options. Options to purchase shares of common stock at $1.00 per share (118,700 shares) and $1.20 per share (164,000 shares) were outstanding during 2004 and 2003, respectively, but were not included in the computation of diluted EPS because the options' exercise prices were greater than the average fair market value of the common shares. The options, which expire in four to six years, were still outstanding at the end of year in both 2004 and 2003.

A reconciliation of basic EPS to diluted EPS is as follows:

| | Year Ended December 31, 2004 | | |
|---|---|---|---|
| | Income (Numerator) | Shares (Denominator) | Per-Share Amount |
| Basic EPS | $ 780,131 | 6,661,375 | $ 0.12 |
| Effect of Dilutive Securities—stock options | | 1,163,500 | |
| Diluted EPS | $ 780,131 | 7,824,875 | $ 0.10 |

| | Year Ended December 31, 2003 | | |
|---|---|---|---|
| | Income (Numerator) | Shares (Denominator) | Per-Share Amount |
| Basic EPS | $ 347,961 | 6,661,375 | $ 0.05 |
| Effect of Dilutive Securities—stock options | | 793,200 | |
| Diluted EPS | $ 347,961 | 7,454,575 | $ 0.05 |

***Research and Development***—Research and development costs are expensed as incurred.

***Stock-Based Employee Compensation***—The Company accounts for its stock-based awards to employees using the intrinsic value method in accordance with Accounting Principles Board ("APB") No. 25, *Accounting for Stock Issued to Employees*, and its related interpretations. Accordingly, no compensation expense has been recognized in the financial statements for stock-based awards to employees. In December 2004, the Financial Accounting Standards Board ("FASB") issued a revision of SFAS No. 123 titled *Share-Based Payment* (No. 123R), which is effective for periods after June 15, 2005. Management has not yet determined the impact that the adoption of SFAS No. 123R will have on the Company's financial statements.

SFAS No. 123, *Accounting for Stock-Based Compensation*, requires the disclosure of pro forma net income or loss as if the Company had adopted the fair value method. Under SFAS No. 123, the fair value of stock-based awards to employees is calculated through the use of the option pricing models, even though such models were developed to estimate the fair value of freely tradable, fully transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require subjective assumptions, including expected time to exercise, which greatly affect the calculated values. If the computed fair values of the stock-based awards had been amortized to expense over the vesting period of the awards, the effect would have been as follows:

| | 2004 | 2003 |
|---|---|---|
| Net income as reported | $780,131 | $347,961 |
| Stock-based employee compensation expense if the fair market method had been applied | (2,668) | (3,741) |
| Pro forma net income if the fair market method had been applied | $777,463 | $344,220 |
| Pro forma Basic EPS | $ 0.12 | $ 0.05 |

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

In calculating the compensation costs under SFAS No. 123, the fair value of the options is estimated on the grant date using a Black-Scholes option pricing model considering the following assumptions:

| | 2004 | 2003 |
|---|---|---|
| Risk free interest rates | 1.00% to 3.25% | 1.00% to 2.71% |
| Expected lives (years) | 1-4 | 1-4 |
| Volatility | 0% | 0% |

Based on these assumptions, using the Black-Scholes option model, the fair value of the options were determined to be $0.07 and $0.04 in 2004 and 2003, respectively.

***Use of Estimates***—The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America 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.

***Concentrations of Credit Risk***—The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information. One customer, who is a related party (see Note 5), represented 92% of net product sales in 2004 and 86% in 2003, and 100% and 75% of product development revenue in 2004 and 2003, respectively. This customer represented approximately 91% and 46% of trade accounts receivable at December 31, 2004 and 2003, respectively.

***Fair Value Disclosures***—The Company's assets and liabilities fair values approximates the carrying values.

***Reclassifications***—Certain prior year amounts have been reclassified to conform with current year classifications.

**2. STOCK OPTION PLAN**

As of December 31, 2004 and 2003, 7,500,000 shares of the Company's common stock have been reserved for issuance under the Stock Option Plan (the "Plan").

Under the Plan, the Board of Directors may grant incentive or nonqualified stock options to purchase shares of the Company's common stock to employees, directors and officers of the Company, or to individuals rendering consulting, advisory or other independent contracting services. The Board of Directors may grant options to purchase the Company's common stock at prices no less than the fair market value at the date of grant for incentive and nonstatutory stock options. In addition, incentive or nonstatutory options may be granted to persons owning more than 10% of the voting power of all classes of stock, at a price not lower than 110% of the fair market value at the date of the grant, as determined by the Board of Directors. Options granted under the Plan generally expire 10 years from the date of grant (5 years for persons owning more than 10% of the voting power of all classes of stock) and vest at a rate of 25% on the first anniversary date and ratably each year thereafter.

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

A summary of the status of the Company's option plan as of December 31, 2004 and 2003, and changes during the years are presented below:

| | 2004 Stock Options Outstanding | | 2003 Stock Options Outstanding | |
|---|---|---|---|---|
| | Number of Shares Outstanding | Weighted Average Exercise Price | Number of Shares Outstanding | Weighted Average Exercise Price |
| Outstanding—beginning of year | 1,075,900 | $ 0.45 | 923,200 | $ 0.45 |
| Granted | 401,100 | 0.57 | 164,100 | 0.40 |
| Forfeited | (28,700) | 0.14 | (11,400) | 0.31 |
| Outstanding—end of year | 1,448,300 | 0.49 | 1,075,900 | 0.45 |
| Exercisable—end of year | 824,550 | 0.46 | 751,500 | 0.43 |

At December 31, 2004 and 2003, there were 5,666,425 and 6,036,725 shares available for future grants under the Plan.

The following table summarizes information about stock options outstanding at December 31, 2004:

| Exercise Prices | Number Outstanding | Weighted Average Remaining Contractual Life (Years) | Exercisable December 31, 2004 |
|---|---|---|---|
| $0.14 | 471,800 | 0.43 | 471,800 |
| 0.30 | 130,700 | 7.50 | 47,500 |
| 0.40 | 228,200 | 8.66 | 48,050 |
| 0.60 | 334,900 | 9.89 | |
| 1.00 | 118,700 | 3.87 | 118,700 |
| 1.20 | 164,000 | 5.69 | 138,500 |
| Total | 1,448,300 | | 824,550 |

For 2004, additional information regarding the options issued during the year to employees is as follows:

| 2004 | Options Issued | Exercise Price | Fair Value |
|---|---|---|---|
| January 1 to March 31 | 57,800 | $ 0.40 | $ 0.05 |
| April 1 to June 30 | 8,400 | 0.40 | 0.05 |
| July 1 to September 30 | 17,100 | 0.60 | 0.08 |
| October 1 to December 31 | 317,800 | 0.60 | 0.08 |

The exercise price was determined by a market valuation performed by a board member at the time the shares were issued.

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

## 3. LEASES

The Company leases manufacturing machinery and equipment under capital leases with costs of $248,091 and $195,687 in 2004 and 2003, respectively. These assets are amortized over the estimated useful life of the asset, and such amortization is included in depreciation expense. Depreciation of $29,673 and $27,955 was recognized on the capital leases in 2004 and 2003, respectively, and accumulated depreciation on the capital leases was $168,818 and $139,145 at December 31, 2004 and 2003, respectively. The future minimum annual rentals under capital lease obligations for leases in place as of December 31, 2004 are as follows:

| | |
|---|---|
| 2005 | $ 28,854 |
| 2006 | 8,910 |
| | 37,764 |
| Less portion of payments representing interest | 2,244 |
| Present value of lease payments | 35,520 |
| Less current portion | 26,913 |
| Long-term lease obligations | $ 8,607 |

The Company rents its fabrication and office facilities under leases expiring in 2010. At December 31, 2004, the operating leases in place provide for annual lease payments of:

| | |
|---|---|
| 2005 | $ 181,000 |
| 2006 | 181,000 |
| 2007 | 181,000 |
| 2008 | 181,000 |
| 2009 | 181,000 |
| 2010 | 34,000 |

Rent expense was approximately $124,000 in 2004 and $82,000 in 2003.

## 4. INCOME TAXES

The provision for income taxes is as follows:

| | 2004 | 2003 |
|---|---|---|
| Federal: | | |
| Current | $ 385,872 | $297,907 |
| Income tax credit | (128,000) | (64,582) |
| Deferred | 43,458 | (45,452) |
| Total federal | 301,330 | 187,873 |
| State: | | |
| Current | 82,000 | 90,132 |
| Deferred | 7,670 | 37,356 |
| Total state | 89,670 | 127,488 |
| Total tax provision | $ 391,000 | $315,361 |

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

A reconciliation of income tax at the statutory rate to the Company's effective rate is as follows:

| | 2004 | 2003 |
|---|---|---|
| Computed at the statutory rate | 34.0% | 34.0% |
| State income tax expense—net of federal benefit | 5.1 | 12.7 |
| Research and development income tax credit—net | (7.2) | (6.4) |
| Other | 1.5 | 7.2 |
| Income tax expense—effective rate | 33.4% | 47.5% |

Deferred income tax assets and liabilities are computed annually for differences between the financial statement and tax bases of assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities.

Temporary differences gave rise to the following deferred tax asset (liability) at December 31, 2004 and 2003:

| | 2004 | 2003 |
|---|---|---|
| Excess of tax over financial accounting depreciation | $(59,000) | $(40,664) |
| Accrued vacation pay | 24,000 | 16,000 |
| Inventory reserves | 7,000 | 4,000 |
| Allowance for bad debt | | 46,000 |
| Inventory 263A Unicap | 42,000 | 39,792 |
| Total | $ 14,000 | $ 65,128 |

**5. RELATED PARTY**

The Company transacts business with AtriCure, Inc. ("AtriCure"). AtriCure was created as a spin-off of the Company to focus on the surgical treatment of atrial fibrillation.

In February 2003, AtriCure and the Company amended an agreement that engages the Company 1) to develop and manufacture electrosurgical devices, 2) to license technology, and 3) to use certain facilities, software and equipment. This agreement, as amended, expires on December 31, 2005.

**6. LINE OF CREDIT**

The Company has available a revolving line of credit for up to $1,000,000 with interest at prime plus 1.0% (5.75% at December 31, 2004) which expires August 2005. All assets are pledged as collateral on the revolving line of credit. There were no borrowings under the line of credit in 2004 or 2003.

**ENABLE MEDICAL CORPORATION**

**NOTES TO FINANCIAL STATEMENTS—(Continued)**
**YEARS ENDED DECEMBER 31, 2004 AND 2003**

## 7. PROFIT SHARING PLAN

The Company sponsors a defined contribution savings and profit sharing retirement plan. Eligible employees may contribute up to 25% of their eligible compensation. For every dollar contributed by a participant, the Company will match a fixed percentage set prior to the end of the fiscal year (50% up to a maximum of 6% for 2004 and 2003). The Company may also make discretionary contributions. Total Company matching and discretionary contributions charged to expense were approximately $38,000 and $27,000 in 2004 and 2003, respectively.

## 8. SUBSEQUENT EVENT

The Company entered into an agreement and plan of merger effective February 14, 2005 by which AtriCure agreed to purchase all of the Company's outstanding shares. As noted in Note 5, AtriCure is a related party to the Company.

The aggregate consideration to be paid by AtriCure for the Company will be $6,500,000 if the outstanding shares are purchased on or prior to July 1, 2005; if the shares are purchased after July 1, 2005, but prior to December 31, 2005, when the agreement expires, the total consideration will be $7,000,000. In February 2005, AtriCure made an advance payment of a portion of the purchase price in the amount of $500,000. The agreement to purchase the outstanding shares of Enable is contingent on AtriCure completing an initial public offering of its common stock, in which AtriCure realizes gross proceeds of at least $35,000,000.

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**ENABLE MEDICAL CORPORATION**

**CONDENSED BALANCE SHEET**
**(Unaudited)**

| | March 31, 2005 |
|---|---|
| **Assets** | |
| Current assets: | |
| Cash and cash equivalents | $ 1,407,637 |
| Accounts receivable(a), less allowance for doubtful accounts of $0 | 931,127 |
| Inventory | 701,845 |
| Prepaid expenses and other current assets | 93,273 |
| Total current assets | 3,133,882 |
| Property and equipment, net | 476,499 |
| Other assets | 10,631 |
| Total assets | $ 3,621,012 |
| **Liabilities and shareholders' equity** | |
| Current liabilities: | |
| Current portion of capital lease obligations | $ 20,305 |
| Dividends payable | |
| Accounts payable | 689,144 |
| Accrued liabilities | 233,207 |
| Advance payment for acquisition of company | 500,000 |
| Total current liabilities | 1,442,656 |
| Capital lease obligation | 8,607 |
| Deferred income taxes | 59,000 |
| Shareholders' equity: | |
| Common Stock, $.01 par value, 10,000,000 shares authorized, 6,661,375 shares issued and outstanding as of March 31, 2005 | 66,614 |
| Additional paid-in capital | 563,761 |
| Retained earnings | 1,480,374 |
| Total shareholders' equity | 2,110,749 |
| Total liabilities and shareholders' equity | $ 3,621,012 |

*(a) Includes the following assets resulting from transactions with related parties:*

| | |
|---|---|
| *Accounts receivable* | *$ 821,438* |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**CONDENSED STATEMENTS OF OPERATIONS**
**(Unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | **2005** | **2004** |
| Revenues: | | |
| Sales of products(a) | $ 1,716,694 | $ 1,442,832 |
| Product development(a) | 382,635 | 192,291 |
| Government grant for product development | 17,500 | 100,648 |
| Total revenues | 2,116,829 | 1,735,771 |
| Cost of revenues: | | |
| Product sales | 992,437 | 1,021,996 |
| Billable research and development costs | 400,083 | 323,486 |
| Total cost of revenues | 1,392,520 | 1,345,482 |
| Gross Profit | 724,309 | 390,289 |
| Expenses: | | |
| Selling, general and administrative expenses | 362,125 | 161,748 |
| Interest, net | (3,669) | 218 |
| Total expenses | 358,456 | 161,966 |
| Income before provision for income taxes | 365,853 | 228,323 |
| Income tax expense | 146,341 | 91,329 |
| Net income | $ 219,512 | $ 136,994 |
| Earnings per common share: | | |
| Basic | $ 0.03 | $ 0.02 |
| Diluted | $ 0.03 | $ 0.02 |
| Weighted average shares outstanding: | | |
| Basic | 6,661,375 | 6,661,375 |
| Diluted | 7,749,175 | 7,512,375 |

*(a) Includes the following revenue resulting from transactions with related parties:*

| | | |
|---|---|---|
| *Sales of products* | *$ 1,621,470* | *$ 1,286,481* |
| *Product development* | *$ 382,635* | *$ 192,291* |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**CONDENSED STATEMENTS OF CASH FLOWS**
**(Unaudited)**

| | Three Months Ended March 31, | |
|---|---|---|
| | **2005** | **2004** |
| Cash flows used in operating activities: | | |
| Net income | $ 219,512 | $136,994 |
| Adjustments to reconcile net loss to net cash provided by operating activities: | | |
| Depreciation | 49,612 | 41,770 |
| Deferred income taxes | — | 46,000 |
| Changes in assets and liabilities: | | |
| Accounts receivable | (518,432) | (67,818) |
| Income tax receivable/payable | — | 829 |
| Inventory | (55,391) | 195,864 |
| Prepaid expenses | (107) | 29,514 |
| Other assets | — | (631) |
| Accounts payable | 144,922 | 41,241 |
| Accrued liabilities | 86,746 | (26,743) |
| Advance payment for acquisition of company | 500,000 | |
| Net cash provided by operating activities | 426,862 | 397,020 |
| Cash flows from investing activities: | | |
| Purchases of property and equipment | (65,693) | (60,238) |
| Cash flows from financing activities: | | |
| Principal payments on capital lease obligations | (6,609) | (5,656) |
| Payment of dividend | (500,000) | |
| Net cash used in financing activities | (506,609) | (5,656) |
| Net increase (decrease) in cash and cash equivalents | (145,440) | 331,126 |
| Cash and cash equivalents—beginning of period | 1,553,077 | 422,436 |
| Cash and cash equivalents—end of period of period | $1,407,637 | $753,562 |
| Supplemental schedule of noncash investing activities: | | |
| Property and equipment purchased through capital leases | | $ 49,338 |

See notes to financial statements.

**ENABLE MEDICAL CORPORATION**

**NOTES TO CONDENSED FINANCIAL STATEMENTS**

## 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

***Nature of the Business***—Enable Medical Corporation (the "Company") was incorporated in the State of Delaware on April 11, 1994 and began production of products for sale in 1998.

***Basis of Presentation***—The accompanying interim financial statements have been prepared in accordance with the rules and regulations of Securities and Exchange Commission. The accompanying interim financial statements are unaudited, but in the opinion of management, contain all the normal, recurring adjustments considered necessary to present fairly the financial position, results of operations and cash flows for the periods presented in conformity with generally accepted accounting principles applicable to interim periods. Results of operations are not necessarily indicative of the results expected for the full fiscal year or for any future period.

The accompanying Consolidated Financial Statements should be read in conjunction with the audited Financial Statements of the Company included in this prospectus.

***Segment Information***—The Company operates and is managed under a single operating segment which is comprised of two business units, Enable Surgical Products and Enable Design and Manufacturing. The Surgical Products unit is engaged in the research and development of RF energy based products for surgery. The Surgical Products unit is currently distributing a line of bipolar scissors used in general surgery, cardiovascular surgery, gynecology, urology, otolaryngology, and plastic/cosmetic surgery. This line is being marketed in the United States, Europe, and Asia. The Surgical Products unit has a portfolio of RF technologies covered by U.S. and European patents that are being considered for licensing and/or commercialization by the Company. The Design and Manufacturing unit provides contract design, research and development and manufacturing services to AtriCure, Inc. (see Note 2) and other medical device companies.

***Cash and Cash Equivalents***—The Company considers highly liquid investments with maturities of three months or less at the date of acquisition as cash equivalents for the purposes of the statements of cash flows.

***Revenue Recognition***—Product sales revenue recognized when title to the goods and risk of loss transfer to customers and there are no remaining obligations that will affect the customer's final acceptance of the sale. The Company's standard sales terms define the transfer of title and risk of loss to occur upon shipment to the respective customer. Enable maintains no post-shipping obligations to the recipients of the respective equipment. Enable does not accept product returns unless the products are damaged in shipment or deemed substandard by the customer's quality control department.

Product development revenue is recognized as contract costs are incurred. The achievement of milestones is not required under the agreement as revenue is earned by Enable's ongoing research and development activities. The Company received research grants through the National Institutes of Health. Grant revenue is recognized as funds are expended and not as awarded by awarding agencies.

***Inventory***—Inventories are stated at the lower of cost or market using the first-in, first-out ("FIFO") cost method. Inventories consist of the following:

| | March 31, 2005 |
|---|---|
| Raw materials | $296,061 |
| Work in process | 243,274 |
| Finished goods | 179,596 |
| Reserve for obsolescence | (17,086) |
| | $701,845 |

**ENABLE MEDICAL CORPORATION**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**

***Property and Equipment***—Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed on the straight-line method for financial reporting purposes over the estimated useful lives of the assets, which range from three to seven years. The Company, using its best estimates based on reasonable and supportable assumptions and projections, reviews for impairment property and equipment in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets.* The Company determined that there was no impairment of property and equipment in 2004 and 2003, respectively.

***Earnings per share***—Earnings per common share ("EPS") is based on the weighted average number of common shares outstanding during the period. The calculation of net income per common share (diluted) assumes the exercise of stock options. Options to purchase shares of common stock at $1.00 per share (118,700 shares) and $1.20 per share (164,000 shares) were outstanding during 2004 and for the first three months of 2005, respectively, but were not included in the computation of diluted EPS because the options' exercise prices were greater than the average fair market value of the common shares. The options, which expire in four to six years, were still outstanding at the end of year in both 2004 and 2003.

A reconciliation of basic EPS to diluted EPS is as follows:

| | For the Three Months Ended March 31, 2005 | | |
|---|---|---|---|
| | Income (Numerator) | Shares (Denominator) | Per-Share Amount |
| Basic EPS | $ 219,512 | 6,661,375 | $ 0.03 |
| Effect of Dilutive Securities—stock options | | 1,087,800 | |
| Diluted EPS | $ 219,512 | 7,749,175 | $ 0.03 |

| | For the Three Months Ended March 31, 2004 | | |
|---|---|---|---|
| | Income (Numerator) | Shares (Denominator) | Per-Share Amount |
| Basic EPS | $ 136,994 | 6,661,375 | $ 0.02 |
| Effect of Dilutive Securities—stock options | | 851,000 | |
| Diluted EPS | $ 136,994 | 7,512,375 | $ 0.02 |

***Research and Development***—Research and development costs are expensed as incurred.

***Stock-Based Employee Compensation***—The Company accounts for its stock-based awards to employees using the intrinsic value method in accordance with Accounting Principles Board ("APB") No. 25, *Accounting for Stock Issued to Employees*, and its related interpretations. Accordingly, no compensation expense has been recognized in the financial statements for stock-based awards to employees. In December 2004, the Financial Accounting Standards Board ("FASB") issued a revision of SFAS No. 123 titled *Share-Based Payment* (No. 123R), which is effective for periods after June 15, 2005. Management has not yet determined the impact that the adoption of SFAS No. 123R will have on the Company's financial statements.

SFAS No. 123, *Accounting for Stock-Based Compensation*, requires the disclosure of pro forma net income or loss as if the Company had adopted the fair value method. Under SFAS No. 123, the fair value of stock-based awards to employees is calculated through the use of the option pricing models, even though such models were developed to estimate the fair value of freely tradable, fully transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require subjective assumptions, including expected time to exercise, which greatly affect the calculated values. If the computed fair

**ENABLE MEDICAL CORPORATION**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**

values of the stock-based awards had been amortized to expense over the vesting period of the awards, the effect would have been as follows:

| | Three months ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Net income as reported | $ 219,512 | $ 136,994 |
| Stock-based employee compensation expense if the fair market method had been applied | (628) | (667) |
| Pro forma net income if the fair market method had been applied | $ 218,884 | $ 136,327 |
| Pro forma Basic EPS | $ 0.03 | $ 0.02 |

In calculating the compensation costs under SFAS No. 123, the fair value of the options is estimated on the grant date using a Black-Scholes option pricing model considering the following assumptions:

| | Three months ended March 31, | |
|---|---|---|
| | 2005 | 2004 |
| Risk free interest rates | 1.00%-3.75% | 1.00% to 3.60% |
| Expected lives (years) | 1-4 | 1-4 |
| Volatility | 0% | 0% |

Based on these assumptions, using the Black-Scholes option model, the fair value of the options were determined to be $0.08 and $0.07 for the three months ended March 31, 2005 and 2004, respectively.

***Use of Estimates***—The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America 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.

***Concentrations of Credit Risk***—The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information. One customer, who is a related party (see Note 2), represented 94% of net product sales for the three months ended march 31, 2005 and 89% for the three months ended March 31, 2004 and 100% of product development revenue for the three months ended March 31, 1005 and 2004. This customer represented approximately 88% and 91% of trade accounts receivable at March 31, 2005 and December 31, 2004, respectively.

***Fair Value Disclosures***—The Company's assets and liabilities fair values approximates the carrying values.

***Reclassifications***—Certain prior year amounts have been reclassified to conform with current year classifications.

**2. RELATED PARTY**

The Company transacts business with AtriCure, Inc. ("AtriCure"). AtriCure was created as a spin-off of the Company to focus on the surgical treatment of atrial fibrillation.

In February 2003, AtriCure and the Company amended an agreement that engages the Company 1) to develop and manufacture electrosurgical devices, 2) to license technology, and 3) to use certain facilities, software and equipment. This agreement, as amended, expires on December 31, 2005.

**ENABLE MEDICAL CORPORATION**

**NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)**

**3. LINE OF CREDIT**

The Company has available a revolving line of credit for up to $1,000,000 with interest at prime plus 1.0%, which expires August 2005. All assets are pledged as collateral on the revolving line of credit. There were no borrowings under the line of credit in 2004 or during the first three months of 2005.

**4. PROPOSED ACQUISITION OF ENABLE**

The Company entered into an agreement and plan of merger effective February 14, 2005 by which AtriCure agreed to purchase all of the Company's outstanding shares. As noted in Note 2, AtriCure is a related party to the Company.

The aggregate consideration to be paid by AtriCure for the Company will be $6,500,000 if the outstanding shares are purchased on or prior to July 1, 2005; if the shares are purchased after July 1, 2005 but prior to December 31, 2005, when the agreement expires, the total consideration will be $7,000,000. In February 2005, AtriCure made an advance payment of a portion of the purchase price in the amount of $500,000. The agreement to purchase the outstanding shares of Enable is contingent on AtriCure completing an initial public offering of its common stock, in which AtriCure realizes gross proceeds of at least $35,000,000.

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**ATRICURE, INC.**

**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial information has been derived from the financial statements of AtriCure, Inc. (the "Company") and Enable Medical Corporation ("Enable") as of and for the three months ended March 31, 2005 and for the year ended December 31, 2004 included in this prospectus. The Company intends to use $6,000,000 of the net proceeds of this offering (or $6,500,000 if the closing occurs after July 1, 2005) to acquire Enable contemporaneously with the closing of this offering.

The unaudited pro forma condensed combined balance sheet as of March 31, 2005 gives effect to the following transactions as if such transactions had occurred on March 31, 2005:

- this offering of shares of common stock at an initial public offering price of $ (which is the mid point of the range set forth on the cover) and the application of net proceeds therefrom;
- the acquisition of Enable Medical Corporation;
- the conversion of all our redeemable preferred stock into shares of common stock; and
- amendment and restatement of the Company's Charter.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2004 and the three months ended March 31, 2005 give effect to the above transactions as if such transactions had occurred on January 1, 2004.

The unaudited pro forma condensed combined financial information should be read in conjunction with the historical financial statements of the Company and Enable, and the related notes thereto, included elsewhere in this prospectus.

The unaudited pro forma condensed combined financial information is presented for informational purposes only. The pro forma information has been prepared based on currently available information and assumptions that we believe are reasonable. The unaudited pro forma condensed combined financial information does not purport to represent what our results of operations or balance sheet information would have been if the transactions had occurred as of the dates indicated, nor are they indicative of results for any future periods.

**ATRICURE, INC.**

**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**
**MARCH 31, 2005**

| | AtriCure Inc. (historical) | Enable Medical Corporation (historical) | Proforma Adjustments Relating to The Enable Acquisition | Proforma Adjustments Relating to the Conversion of Preferred Stock and this Offering | Pro Forma Total |
|---|---|---|---|---|---|
| **Assets** | | | | | |
| Current assets: | | | | | |
| Cash and cash equivalents | $ 2,451,592 | $1,407,637 | $(6,500,000)(a) | (e) | |
| Accounts receivable, net | 4,396,847 | 931,127 | (821,438)(c) | | 4,506,536 |
| Inventory | 1,050,363 | 701,845 | | | 1,752,208 |
| Prepaid expenses | 701,159 | 20,273 | (500,000)(b) | | 221,432 |
| Deferred income taxes | | 73,000 | (73,000)(d) | | — |
| Total current assets | 8,599,961 | 3,133,882 | (7,894,438) | — | |
| Property and equipment, net | 2,561,470 | 476,499 | | | 3,037,969 |
| Identifiable intangible assets | | | 1,070,000 (a) | | 1,070,000 |
| Goodwill | | | 3,319,251 (a) | | 3,319,251 |
| Other Assets | 1,246,447 | 10,631 | | | 1,257,078 |
| Total assets | $ 12,407,878 | $3,621,012 | $(3,505,187) | $ — | |
| **Liabilities and shareholders' equity** | | | | | |
| Current liabilities: | | | | | |
| Current portion of capital lease obligations | $ — | $ 20,305 | | | $ 20,305 |
| Accounts payable | 1,103,501 | 520,527 | (821,438)(c) | | 802,590 |
| Commissions payable | 722,651 | | | | 722,651 |
| Accrued liabilities | 2,156,384 | 733,207 | (500,000)(b) | | 2,389,591 |
| Income taxes payable | — | 168,617 | (168,617)(d) | | — |
| Total current liabilities | 3,982,536 | 1,442,656 | (1,490,055) | — | 3,935,137 |
| Capital lease obligation | | 8,607 | | | 8,607 |
| Deferred income taxes | | 59,000 | (59,000)(d) | | — |
| Redeemable preferred stock | 37,741,746 | | | (37,741,746)(f) | — |
| Total liabilities | 41,724,282 | 1,510,263 | (1,490,055) | (37,741,746) | 4,002,744 |
| Shareholders' equity: | | | | | |
| Common stock | 716 | 66,614 | (66,614)(a) | (e) | |
| | | | | (f) | |
| Paid-in Capital | 3,336,608 | 563,761 | (563,761)(a) | (e) | |
| | | | | (f) | |
| Unearned compensation | (645,224) | — | | | |
| Retained earnings (deficit) | (32,008,504) | 1,480,374 | (1,480,374)(a) | (f) | |
| | | | 154,617 (d) | | |
| Total shareholders' equity (deficit) | (29,316,404) | 2,110,749 | (2,015,132) | | |
| Total liabilities and shareholders' equity | $ 12,407,878 | $3,621,012 | $(3,505,187) | | |

See accompanying notes to unaudited pro forma condensed combined financial statements.

**ATRICURE, INC.**

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**
**FOR THE YEAR ENDED DECEMBER 31, 2004**

| | AtriCure Inc. (historical) | Enable Medical Corporation (historical) | Proforma Adjustments Relating to The Enable Acquisition | Proforma Adjustments Relating to the Conversion of Preferred Stock and this Offering | Pro Forma Total |
|---|---|---|---|---|---|
| Revenues: | | | | | |
| Sale of Product | $18,946,037 | $5,395,594 | $(4,941,341)(a) | | $19,400,290 |
| Commissions | 210,995 | — | | | 210,995 |
| Product development | — | 1,228,659 | (1,228,659)(b) | | — |
| Government grant for product development | — | 310,857 | | | 310,857 |
| Total revenues | 19,157,032 | 6,935,110 | (6,170,000) | — | 19,922,142 |
| Cost of revenues: | | | | | |
| Product Sales | 5,201,562 | 3,446,772 | $(4,941,341)(a) | | 3,920,993 |
| | | | 214,000 (d) | | |
| Billable research and development costs | | 1,332,513 | (1,228,659)(c) | | 103,854 |
| Total costs of revenues | 5,201,562 | 4,779,285 | (5,956,000) | — | 4,024,847 |
| Gross Profit | 13,955,470 | 2,155,825 | — | — | 15,897,295 |
| Expenses: | | | | | |
| Research and development expenses | 4,422,014 | — | (1,228,659)(b) | | 4,422,014 |
| | | | 1,228,659 (c) | | |
| Selling, general and administrative expenses | 15,186,081 | 980,778 | | | 16,166,859 |
| Total expenses | 19,608,095 | 980,778 | — | — | 20,588,873 |
| Income (loss) from operations | (5,652,625) | 1,175,047 | (214,000) | — | (4,691,578) |
| Preferred stock interest expense | 3,905,169 | — | | (3,905,169)(f) | — |
| Other interest income (expense)—net | 105,926 | (3,916) | | | 102,010 |
| Income (loss) before taxes | (9,451,868) | 1,171,131 | (214,000) | 3,905,169 | (4,589,568) |
| Income tax expense | — | 391,000 | (377,000)(e) | | 14,000 |
| Net Income (loss) available to common shareholders | $ (9,451,868) | $ 780,131 | $ 163,000 | $ 3,905,169 | $ (4,603,568) |
| Earning (loss) per common share: | | | | | |
| Basic | $ (1.36) | $ 0.12 | | (g) | |
| Diluted | $ (1.36) | $ 0.10 | | (g) | |
| Weighted average shares outstanding: | | | | | |
| Basic | 6,948,116 | 6,661,375 | | (g) | |
| Diluted | 6,948,116 | 7,824,875 | | (g) | |

See accompanying notes to unaudited pro forma condensed combined financial statements.

**ATRICURE, INC.**

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**
**FOR THE THREE MONTHS ENDED MARCH 31, 2005**

| | AtriCure Inc. (historical) | Enable Medical Corporation (historical) | Proforma Adjustments Relating to The Enable Acquisition | Proforma Adjustments Relating to the Conversion of Preferred Stock and this Offering | Pro Forma Total |
|---|---|---|---|---|---|
| Revenues: | | | | | |
| Sale of Product | $ 7,489,724 | $1,716,694 | $(1,621,470)(a) | | $ 7,584,948 |
| Commissions | 8,035 | | | | 8,035 |
| Product development | | 382,635 | (382,635)(b) | | — |
| Government grant for product development | | 17,500 | | | 17,500 |
| Total revenues | 7,497,759 | 2,116,829 | (2,004,105) | — | 7,610,483 |
| Cost of revenues: | | | | | |
| Product Sales | 1,919,512 | 992,437 | (1,621,470)(a) | | 1,343,979 |
| | | | 53,500 (d) | | |
| Billable research and development costs | | 400,083 | (382,635)(c) | | 17,448 |
| Total costs of revenues | 1,919,512 | 1,392,520 | (1,950,650) | — | 1,361,472 |
| Gross Profit | 5,578,247 | 724,309 | — | — | 6,249,056 |
| Expenses: | | | | | |
| Research and development | 1,736,836 | | (382,635)(b) | | 1,736,836 |
| expenses | | | 382,635 (c) | | |
| Selling, general and administrative expenses | 5,252,098 | 362,125 | | | 5,614,223 |
| Total expenses | 6,988,934 | 362,125 | — | — | 7,351,059 |
| Income (loss) from operations | (1,410,687) | 362,184 | (53,500) | | (1,102,003) |
| Preferred stock interest expense | 976,292 | | | (976,292)(f) | — |
| Other interest income (expense)—net | 20,801 | 3,669 | | | 24,470 |
| Income (loss) before taxes | (2,366,178) | 365,853 | (53,500) | 976,292 | (1,077,533) |
| Income tax expense | | 146,341 | (146,341)(e) | | — |
| Net Income (loss) available to common shareholders | $(2,366,178) | $ 219,512 | $ 92,841 | $ 976,292 | $(1,077,533) |
| Earning (loss) per common share | | | | | |
| Basic | $ (0.33) | $ 0.03 | | | |
| Diluted | $ (0.33) | $ 0.03 | | | |
| Weighted average shares outstanding | | | | | |
| Basic | 7,149,858 | 6,661,375 | | | |
| Diluted | 7,149,858 | 7,749,175 | | | |

See accompanying notes to unaudited pro forma condensed combined financial statements.

**ATRICURE, INC.**

**NOTES TO THE UNAUDITED PRO FORMA**
**CONDENSED COMBINED FINANCIAL STATEMENTS**

## 1. DESCRIPTION OF TRANSACTIONS AND BASIS OF PRESENTATION

In connection with the initial public offering of its common stock, the Company estimates that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full, assuming an initial public offering price of $ per share.

The Company entered into a merger agreement with Enable and made an initial payment of $0.5 million, which is non-refundable unless the agreement is terminated due to a breach or a failure by Enable. Under the terms of this agreement, if the closing occurs on or before July 1, 2005, the purchase price will be an additional $6 million, or an additional $6.5 million if the closing occurs after July 1, 2005 but prior to December 31, 2005, when the agreement expires. In accordance with the terms of this agreement, Enable paid a cash dividend of $0.5 million to its shareholders on January 31, 2005 and, immediately prior to the closing of our acquisition, Enable is entitled to make a cash dividend to its shareholders of up to $0.5 million, provided that, after such dividend is paid, (i) the sum of Enable's cash and accounts receivable is at least equal to its liabilities, as defined in the agreement, and (ii) Enable's shareholders' equity is at least equal to $0.5 million. If prior to the closing of this offering, Enable sells certain of its assets unrelated to the AtriCure bipolar ablation system, the Company will receive 50% of the proceeds from that sale, assuming that our acquisition of Enable closes. If, instead, the Company sells those assets after the closing of the acquisition but prior to its third anniversary, the Company will be required to pay the former shareholders of Enable 50% of the consideration we receive from that sale in excess of $1 million, subject to a maximum payment to the Enable shareholders of $2 million.

Effective upon the closing of this offering, the outstanding redeemable preferred stock of the Company will be converted into shares of common stock.

The unaudited pro forma condensed combined financial statements are presented to reflect the effect of the net proceeds from the offering, the acquisition of Enable, the allocation of the purchase price using the purchase method of accounting based upon preliminary estimates of the fair value of the assets acquired and liabilities assumed and the elimination of historical inter-company transactions between the two companies. In addition, the conversion of the Company's preferred stock into shares of common stock has been reflected in the unaudited pro forma condensed combined financial statements.

The acquisition of Enable was recorded under the purchase method of accounting. The purchase price has been allocated to assets acquired and liabilities assumed based on the estimated fair market value as of January 1, 2004. The allocation of the purchase price is as follows:

| | |
|---|---|
| Net working capital | $ 1,691,226 |
| Machinery and equipment | 476,499 |
| Intangible asset—proprietary manufacturing technology | 1,070,000 |
| Other assets | 10,631 |
| Goodwill | 3,319,251 |
| Other liabilities | (67,607) |
| | $ 6,500,000 |

This initial allocation of the purchase price to specific assets and liabilities was based, in part, upon preliminary appraisals, and is therefore subject to change. Further, since the date of the acquisition is not fixed, it is likely that the working capital of Enable on the date of acquisition will be different with a corresponding

**ATRICURE, INC.**

**NOTES TO THE UNAUDITED PRO FORMA**
**CONDENSED COMBINED FINANCIAL STATEMENTS—(Continued)**

adjustment to goodwill. The value attributed to the proprietary manufacturing technology was determined using valuation methods known as the income approach and the excess earnings approach in an appraisal provided by an independent party. The excess of the estimated purchase price over the recorded amount of net assets has been preliminarily allocated to identifiable intangible assets and goodwill. Intangible assets are being amortized over 5 years. The ultimate allocation of purchase price will depend on the final results of fair value appraisals which we expect to be finalized within one year of the closing of the acquisition.

Enable maintains certain product development agreements, the most significant of which is with AtriCure. The current agreement, as amended, expires on December 31, 2005, engages Enable to develop and manufacture electrosurgical devices, and to utilize certain facilities, software and equipment. The Company was required to pay Enable a monthly fee of at least $96,000 for certain product development services during the period between February 1, 2003 to January 31, 2004. After January 31, 2004 there is no specific monthly fee requirement. The achievement of milestones is not required under the agreement as revenue is earned by Enable's ongoing research and development activities. The Company believes that its contract with Enable represents current market values, especially given its short duration. Further, there are no stated settlement provisions in the contract. Accordingly, the Company does not believe that there is any value to be allocated to the preexisting relationship.

**2. ADJUSTMENTS TO THE UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**

The unaudited pro forma condensed combined balance sheet has been prepared as if the initial public offering and the net proceeds therefrom, the acquisition of Enable, the conversion of the redeemable preferred stock and the amendment and restatement of the Company's charter had occurred on March 31, 2005. The pro forma adjustments reflected on the unaudited pro forma condensed combined balance sheet have been made for the following:

(a) To record the acquisition of Enable and the allocation of the $6,500,000 aggregate purchase price using the purchase method of accounting based upon preliminary estimates of the fair value of Enable's identifiable assets and liabilities and the elimination of its historical shareholders' equity. The excess of the purchase price over the book value of the assets acquired and the liabilities assumed of $4,389,251 was allocated to an identifiable intangible asset, representing the proprietary manufacturing technology, for a value of $1,070,000 and goodwill of $3,319,251.

(b) To eliminate the asset and liability recorded on the Company's and Enable's books related to the initial payment towards the purchase made by the Company to Enable in February.

(c) To eliminate the inter-company receivable and payable between Enable and the Company as of March 31, 2005.

(d) To record the effect on the income tax accounts resulting from the merger.

(e) To record the estimated net proceeds of $ million from the initial public offering based upon the sale of shares of common stock at an initial public offering price of $ per share, assuming no exercise of the underwriters' over-allotment option.

(f) To record the conversion of the redeemable preferred stock into shares of the Company's common stock.

**ATRICURE, INC.**

**NOTES TO THE UNAUDITED PRO FORMA**
**CONDENSED COMBINED FINANCIAL STATEMENTS—(Continued)**

## 3. ADJUSTMENTS TO THE UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF OPERATIONS

The unaudited pro forma condensed combined statements of operations have been prepared as if the initial public offering and the net proceeds therefrom, the acquisition of Enable, the conversion of the redeemable preferred stock and the amendment and restatement of the Company's Charter had occurred on January 1, 2004.

The unaudited pro forma condensed combined statement of operations reflects a reduction of revenue of Enable for sales to Atricure of $4.9 million for the year ended December 31, 2004 and $1.6 million for the three months ended March 31, 2005. There is also an entry in the Cost of Revenues to eliminate the Atricure recorded amount of purchases from Enable of $4.9 million for the year ended December 31, 2004 and $1.6 million for the three months ended March 31, 2005 (see explanation (a) below). While it may appear from these entries that there is no margin on this revenue, that is not the case as the entries apply to two different companies. The net effect of these entries is to leave the entire profit of Enable in the unaudited pro forma condensed combined statement of operations.

The unaudited pro forma condensed combined statement of operations also reflects an entry to eliminate the billing for research and development costs rendered by Enable. The entry eliminates the billings in the Product development revenue of Enable of $1.2 million as of December 31, 2004 and $0.4 million as of March 31, 2005 and the costs incurred by Atricure in its research and development expense line (see explanation (b) below). A second entry reclassifies the corresponding amount of cost incurred by Enable from cost of revenues since these costs will not be billable on a combined basis to the research and development expense line (see explanation (c) below). As a result, the billings are eliminated and the research and development expenses related to Atricure are in the research and development expense line reflecting the classification as if these costs had been incurred on a combined basis.

The pro forma adjustments reflected on the unaudited pro forma condensed combined statements of operations have been made for the following:

(a) To eliminate the product sales and purchases between Enable and the Company during 2004 and for the three months ended March 31, 2005.

(b) To eliminate the product research costs charged by Enable to the Company during 2004 and for the three months ended March 31, 2005.

(c) To reclassify Enable's research and development costs which are no longer billable after the acquisition of Enable by the Company.

(d) To record a charge for amortization based upon the preliminary estimate of the portion of the purchase price to be allocated to the fair value of identifiable intangibles, using an estimated useful life of 5 years.

(e) To reverse Enable's income tax provision as a result of the consolidated loss that would have occurred if both companies had been merged on January 1, 2004.

(f) To reverse the preferred stock interest on the pro forma assumption that the redeemable preferred stock is converted into common stock at the beginning of the period.

(g) Unaudited pro forma net loss per share, basic and diluted, and shares used in computing net loss per share, basic and diluted, have been calculated in accordance with the SEC rules for initial public offerings. Pro forma net income (loss) available to common shareholders has been adjusted to give effect to the elimination of preferred stock interest from net income (loss). Pro forma weighted average shares for purposes of the unaudited pro forma basic net income (loss) per share calculation is based on the number of common shares at an initial public offering price of $ (which is the mid point of the range set forth on the cover) and has been adjusted to give effect to the conversion of all of our outstanding shares of redeemable preferred stock into shares of our common stock, which will become effective at the closing of this offering.

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**Part II:**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, to be paid by the Registrant in connection with the sale of the common stock being registered. All amounts other than the SEC registration fee, the NASD filing fees and the NASDAQ National Market application and entry fees are estimates.

| | Amount to be Paid |
|---|---|
| SEC registration fee | $ 6,768 |
| NASD filing fee | 6,250 |
| NASDAQ National Market application fee | 5,000 |
| NASDAQ National Market entry fee | * |
| NASDAQ National Market annual fee (prorated for 2005) | * |
| Legal fees and expenses | * |
| Accounting fees and expenses | * |
| Printing and engraving | * |
| Blue Sky fees and expenses (including legal fees) | * |
| Transfer agent and registrar fees | * |
| Miscellaneous | * |
| Total | $ * |

* To be supplied by amendment.

**Item 14. Indemnification of Directors and Officers**

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the "Securities Act").

As permitted by the Delaware General Corporation Law, the Registrant's amended and restated certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director.

As permitted by the Delaware General Corporation Law, the bylaws of the Registrant provide that (1) the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to certain exceptions, (2) the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to certain exceptions and (3) the rights conferred in the restated bylaws are not exclusive.

Prior to the closing of this offering, the Registrant will enter into indemnification agreements with each of its directors and executive officers to give such directors and officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and to provide additional procedural protections. The Registrant also intends to enter into indemnification agreements with any new directors and executive officers in the future. At present, there is no pending litigation or proceeding involving any of our directors, officers, employees, or agents, where indemnification by us will be required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for such indemnification.

The Underwriting Agreement provides for indemnification by the underwriters of the officers, directors and controlling persons of the Registrant against certain liabilities, including liabilities arising under the Securities Act. Reference is made to the form of underwriting agreement filed as Exhibit 1.1 hereto.

The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws and the indemnification agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant has obtained liability insurance for its officers and directors.

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

In the three years preceding the filing of this registration statement, we have issued the following securities that were not registered under the Securities Act of 1933, as amended (the "Securities Act"). The offers, sales and issuances of these securities were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act or Regulation D and the other rules and regulations promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions not involving a public offering or transactions under compensatory benefit plans and contracts relating to compensation as provided under such Rule 701. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates and warrants issued in such transactions.

1. In April 2002, we issued and sold to 21 accredited investors convertible promissory notes in an aggregate principal amount of $3,500,000, which were convertible into Series B preferred stock. The convertible promissory notes were converted into shares of Series B preferred stock in June 2002. In addition, we issued to these accredited investors warrants to purchase shares of our common stock at a purchase price of $ per share.

2. In June 2002, we issued and sold to 28 accredited investors an aggregate of shares of our Series B preferred stock (including shares issued upon conversion of the convertible promissory notes described above) at a purchase price per share of $ for an aggregate issue price of $ .

3. From time to time we have granted options to purchase our common stock to our directors, employees and consultants, in connection with services rendered to us, pursuant to our 2001 Stock Option Plan. Information regarding these grants since January 2002 is set forth below:

(a) From January 1, 2002 to December 31, 2002, we granted options to purchase an aggregate of shares of our common stock at exercise prices ranging from $ to $ per share;

(b) From January 1, 2003 to December 31, 2003, we granted options to purchase an aggregate of shares of our common stock at an exercise price of $ per share;

(c) From January 1, 2004 to December 31, 2004, we granted options to purchase an aggregate of shares of our common stock at exercise prices ranging from $ to $ per share; and

(d) From January 1, 2005 to the date of this registration statement, we granted options to purchase an aggregate of shares of our common stock at an exercise price ranging from $ to $ per share.

4. In March 2005, we issued to an accredited investor warrants to purchase shares of our common stock at an exercise price per share of $ in connection with the establishment of a $5.0 million secured credit facility.

The offers, sales and issuances of the securities described in paragraphs 1 and 4 were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act in that the issuance of

securities to the recipients did not involve a public offering. The recipients of securities in the transactions represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates and warrants issued in the transaction. Each of the recipients of securities in the transactions described in paragraphs 1 and 4 were accredited.

The offers, sales and issuances of the preferred stock described in paragraph 2 were deemed to be exempt from registration under the Securities Act in reliance on Rule 506 of Regulation D in that the issuance of securities to the accredited investors did not involve a public offering. The purchasers of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates issued in such transactions. Each of the recipients of securities in the transactions described in paragraphs 2 were accredited investors under Rule 501 of Regulation D.

The offers, sales and issuances of the options and common stock described in paragraph 3 were deemed to be exempt from registration under the Securities Act in reliance on Rule 701 in that the transactions were under compensatory benefit plans and contracts relating to compensation as provided under such rule. The recipients of such options and common stock were our employees, directors or bona fide consultants and received the securities pursuant to our 2001 Stock Option Plan. Appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment, business or other relationships, to information about us.

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

**(a) Exhibits**

| Exhibit Number | Description |
|---|---|
| 1.1** | Form of Underwriting Agreement. |
| 2.1 | Agreement and Plan of Merger, dated as of February 14, 2005, between AtriCure, Inc. and Enable Medical Corporation (exhibits and schedules have been omitted but will be furnished supplementally to the Securities and Exchange Commission upon request). |
| 3.1 | Certificate of Incorporation, Filed October 31, 2000. |
| 3.1.1 | Certificate of Amendment, Filed May 24, 2001. |
| 3.1.2 | Certificate of Amendment, Filed November 29, 2001. |
| 3.1.3 | Certificate of Amendment, Filed June 6, 2002. |
| 3.1.4** | Form of Certificate of Amendment relating to the contemplated reverse stock split (which will become effective prior to the closing of this offering). |
| 3.2* | Form of Amended and Restated Certificate of Incorporation (which will become effective at the closing of this offering). |
| 3.3 | Amended and Restated Bylaws. |
| 3.4* | Form of Second Amended and Restated Bylaws to be effective upon the closing of the offering. |
| 4.1 | Amended and Restated Investors' Rights Agreement, dated June 6, 2002 between AtriCure, Inc. and each of the signatory Investors. |
| 4.1.1 | Amendment No. 1 to Amended and Restated Investors' Rights Agreement, dated March 8, 2005 between AtriCure, Inc. and each of the signatory Investors. |

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| Exhibit Number | Description |
|---|---|
| 4.2 | Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of June 6, 2002, by and among AtriCure, Inc., certain Series A shareholders, certain Series B shareholders, and certain common shareholders. |
| 4.3 | Amended and Restated Voting Agreement, dated as of June 6, 2002, by and among AtriCure, Inc., certain common shareholders, certain Series A shareholders, and certain Series B shareholders. |
| 4.4** | Specimen common stock certificate. |
| 4.5 | Specimen of warrant certificate issued to Series B preferred shareholders. |
| 4.6 | Specimen of warrant certificate issued to Lighthouse Capital Partners V, L.P. |
| 5.1** | Opinion of Epstein Becker & Green, P.C. as to legality of the securities. |
| 10.1 | 2001 Stock Option Plan. |
| 10.2** | 2005 Equity Incentive Plan. |
| 10.3** | Development Agreement, dated as of December 1, 2003, between AtriCure, Inc. and Stellartech Research Corporation. |
| 10.4** | Manufacturing Agreement, dated as of December 1, 2003, between AtriCure, Inc. and Stellartech Research Corporation. |
| 10.6 | Lease Agreement, dated as of December 18, 2000, between AtriCure, Inc. and Allen Road Properties Limited Liability Company. |
| 10.6.1 | Agreement to Improve Lease Premises, First Amendment to Lease Dated December 18, 2000, dated as of May 28, 2002, between AtriCure, Inc. and Allen Road Properties Limited Liability Company. |
| 10.6.2 | Agreement to Expand Leased Premises and Extend Lease, Second Amendment to Lease Dated December 18, 2000, dated as of April 8, 2004, between AtriCure, Inc. and Allen Road Properties Limited Liability Company. |
| 10.7 | Loan and Security Agreement No. 4631, dated as of March 8, 2005, by and between Lighthouse Capital Partners V, L.P. and AtriCure, Inc. |
| 10.8** | Master Development, Manufacturing and Supply Agreement, Second Amended and Restated, dated as of March 19, 2003 by and between Enable Medical Corporation and AtriCure, Inc. |
| 10.9** | Technology Transfer Agreement, dated as of May 25, 2001, by and between AtriCure, Inc. and Enable Medical Corporation. |
| 23.1 | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.2 | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.3** | Consent of Epstein Becker & Green, P.C. (included in Exhibit 5.1). |
| 24.1* | Powers of Attorney. |

* Previously filed.
** To be filed by amendment.

**(b) Financial Statement Schedules**

**Schedule II**

**ATRICURE, INC.**
**VALUATION AND QUALIFYING ACCOUNTS**

| Description | Balance at Beginning of Period | Additions Charged to Costs and Expenses | Deductions | Balance at End of Period |
|---|---|---|---|---|
| 2004: | | | | |
| Allowance for Doubtful Accounts | 27,877 | 31,779 | 2,877 | 56,779 |
| 2003: | | | | |
| Allowance for Doubtful Accounts | — | 27,877 | — | 27,877 |
| 2002: | | | | |
| Allowance for Doubtful Accounts | — | — | — | — |

**Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

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

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

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of West Chester, Ohio on this 14th day of June, 2005.

ATRICURE, INC.

By: /s/ DAVID J. DRACHMAN

**David J. Drachman**
***President and Chief Executive Officer***

Pursuant to the requirements of the Securities Act of 1933, as amended, this amendment to the registration statement has been signed by the following persons in the capacities indicated on June 14, 2005:

| Signature | Title(s) |
|---|---|
| * | **Richard M. Johnston** |
| **Richard M. Johnston** | *Chairman of the Board* |
| /s/ DAVID J. DRACHMAN | **David J. Drachman** |
| **David J. Drachman** | *President, Chief Executive Officer and Director (principal executive officer)* |
| /s/ THOMAS J. ETERGINO | **Thomas J. Etergino** |
| **Thomas J. Etergino** | *Chief Financial Officer (principal financial and accounting officer)* |
| * | **Michael D. Hooven** |
| **Michael D. Hooven** | *Director* |
| * | **Donald C. Harrison** |
| **Donald C. Harrison** | *Director* |
| * | **Alan L. Kaganov** |
| **Alan L. Kaganov** | *Director* |
| * | **Karen P. Robards** |
| **Karen P. Robards** | *Director* |
| * | **Norman R. Weldon** |
| **Norman R. Weldon** | *Director* |
| * | **Lee R. Wrubel** |
| **Lee R. Wrubel** | *Director* |

*By /S/ DAVID J. DRACHMAN
**Attorney-in-Fact**

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## Exhibit Index

| Exhibit Number | Description |
|---|---|
| 1.1** | Form of Underwriting Agreement. |
| 2.1 | Agreement and Plan of Merger, dated as of February 14, 2005, between AtriCure, Inc. and Enable Medical Corporation (exhibits and schedules have been omitted but will be furnished supplementally to the Securities and Exchange Commission upon request). |
| 3.1 | Certificate of Incorporation, Filed October 31, 2000. |
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| 3.1.2 | Certificate of Amendment, Filed November 29, 2001. |
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| 3.4* | Form of Second Amended and Restated Bylaws to be effective upon the closing of the offering. |
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| 4.1.1 | Amendment No. 1 to Amended and Restated Investors' Rights Agreement, dated March 8, 2005 between AtriCure, Inc. and each of the signatory Investors. |
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| 4.4** | Specimen common stock certificate. |
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| 10.6.1 | Agreement to Improve Lease Premises, First Amendment to Lease Dated December 18, 2000, dated as of May 28, 2002, between AtriCure, Inc. and Allen Road Properties Limited Liability Company. |

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| 10.8** | Master Development, Manufacturing and Supply Agreement, Second Amended and Restated, dated as of March 19, 2003 by and between Enable Medical Corporation and AtriCure, Inc. |
| 10.9** | Technology Transfer Agreement, dated as of May 25, 2001, by and between AtriCure, Inc. and Enable Medical Corporation. |
| 23.1 | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.2 | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.3** | Consent of Epstein Becker & Green, P.C. (included in Exhibit 5.1). |
| 24.1* | Powers of Attorney. |

* Previously filed.
** To be filed by amendment.

**EXHIBIT 2.1**

*Execution Copy*

**AGREEMENT AND PLAN OF MERGER**
**DATED AS OF FEBRUARY 14, 2005**

**among**

**ATRICURE, INC.**
**(a Delaware corporation)**

**and**

**ENABLE MEDICAL CORPORATION**
**(a Delaware corporation)**

**and**

**RAYMOND W. OGLE**
**(as Stockholder Representative)**

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Schedules

List of Exhibits

*Execution Copy*

**AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER dated as of February 14, 2005 (this "Agreement"), by and among AtriCure, Inc., a Delaware corporation (the "Purchaser"), Enable Medical Corporation, a Delaware corporation (the "Company"), and Raymond W. Ogle, as Stockholder Representative.

W I T N E S S E T H:

WHEREAS, the Company is in the business of providing development, engineering and manufacturing of certain medical devices and other applications (collectively, the "Business");

WHEREAS, the Boards of Directors of the Purchaser and the Company have each determined that it is in the best interests of their respective stockholders for the Purchaser to acquire the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance of such acquisition, the Boards of Directors of the Purchaser and the Company have each approved the merger (the "Merger") of the Company with and into the Purchaser in accordance with the General Corporation Law of the State of Delaware (the "DGCL") or other applicable law and upon the terms and subject to the conditions set forth herein; and

WHEREAS, upon the approval of the Merger and adoption of this Agreement by the Stockholders, the Stockholder Representative shall be appointed as the true and lawful representative, proxy, agent and attorney-in-fact for each Stockholder, to act for and on behalf of the Stockholders in connection with the consummation of the transactions contemplated hereunder, to the extent and in the manner provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, agreements and covenants hereinafter set forth, the parties hereto hereby agree as follows:

**ARTICLE 1.**

**DEFINITIONS**

SECTION 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings unless the context otherwise requires:

"Affiliate" of any Person shall mean any other Person controlling, controlled by or under common control with such first person, where "control" means the possession, directly or indirectly, of the power solely or on a shared basis to direct the management and policies of a person, whether through the ownership of voting securities or otherwise.

"Closing Merger Consideration" shall be equal to (x) Four Million Five Hundred Thousand Dollars ($4,500,000) if the Closing occurs before July 1, 2005 or (y) Five Million Dollars ($5,000,000) if the Closing occurs on or after July 1, 2005.

"Code" shall mean the Internal Revenue Code of 1986, as amended through the date hereof, and the rulings and regulations promulgated thereunder.

"Company Common Stock" shall mean the common stock, $0.01 par value per share, of the Company.

"Company IP" shall mean all of the Company's (A) United States and foreign patents (and applications therefore), continuations, continuations-in-part, divisions, reissues, reexaminations, extensions and disclosures, (B) United States, U.S. state and foreign trademarks (and applications therefor), service marks, logos, trade dress and trade names, whether registered or unregistered, (C) confidential and proprietary ideas, inventions, concepts, formulae, research and development, technical notes, technical information, technology, know-how, trade secrets, inventory, products, ideas, algorithms, processes, methods, (D) proprietary computer software programs and systems, (E) United States and foreign copyrights (and applications therefor), whether registered or unregistered, and (F) Internet domain names, which in each case is used in connection with the Business as currently conducted.

"December 31 Balance Sheet" shall mean the unaudited balance sheet of the Company for the fiscal year ended December 31, 2004, and any accompanying notes thereto.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended through the date hereof, and the rulings and regulations promulgated thereunder.

"Escrow Amount" shall have the meaning referred to in Section 3.06(b).

"Filings" shall mean, collectively, all filings required to be made with Governmental Authorities by the Purchaser and/or the Company under or pursuant to any applicable law relating to the Merger and the transactions contemplated by this Agreement (including the Purchaser IPO).

"Fraud" shall mean actual fraud.

"GAAP" shall mean United States generally accepted accounting principles and practices in effect from time to time.

"Governmental Authority" shall mean any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission, or any court, tribunal, or judicial or arbitral body.

"Governmental Order" shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Substances" shall mean any toxic, hazardous or noxious substance, material or waste, the treatment, handling, storage, transportation or Release of which is

regulated by any Governmental Authority, including, but not limited to, petroleum or constituents thereof as defined in Section 9001 of RCRA, asbestos or any asbestos- containing material of any kind or character which is now or may become friable and polychlorinated biphenyls regulated by the Toxic Substances Control Act, or any other materials or substances designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act, defined as "hazardous waste" pursuant to Section 1004 of RCRA, or defined as "hazardous substances" pursuant to Section 101 of CERCLA.

"Leases" shall mean the leases and subleases for Real Property and all amendments, modifications and supplements thereto, if any, in which the Company has a leasehold or subleasehold interest.

"Lien" shall mean any encumbrance, hypothecation, infringement, lien, mortgage, pledge, restriction, security interest, title retention or other security arrangement, or any other adverse right or interest, charge or claim of a similar nature of or on any asset, property or property interest; provided, however, that the term "Lien" shall not include (a) liens for Taxes or assessments which are not delinquent; and (b) mechanics', landlords', warehousemen's, materialmen's, contractors', workmen's, repairmen's and carriers' liens, and other similar liens arising or incurred in the ordinary course of business to secure amounts that are not past due.

"Material Adverse Effect" shall mean a material adverse effect upon the business, operations, assets, liabilities or condition (financial or otherwise) of the referenced entity, taken as a whole.

"Material Contracts" shall mean all agreements of the Company other than the Leases to which the Company is a party or by which the Company or any of its assets or properties are bound, which (i) require payments after the date of this Agreement to or from the Company in excess of Ten Thousand Dollars ($10,000) and/or (ii) if terminated prior to the Closing, would have a Material Adverse Effect on the Company. For purposes of this definition, related purchase orders between the Company and the same third party that have been issued under the same contract will be aggregated for purposes of determining whether the Material Contracts threshold has been satisfied.

"Merger Consideration" shall mean, collectively, the Closing Merger Consideration and the Escrow Deposit.

"Permits" means all permits, authorizations, variances, notices, approvals, registrations, certificates of completion or legal status, certificates of occupancy, orders or other approvals or licenses granted by any Governmental Authority.

"Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, Governmental Authority, or other entity of any kind.

"Purchaser Common Stock" shall mean the common stock, $0.01 par value per share, of the Purchaser.

"Purchaser IPO" shall mean the initial public offering of the Purchaser's common stock with gross proceeds to the Purchaser of at least Thirty-Five Million Dollars ($35,000,000).

"Real Property" shall mean the real property used by the Company in the conduct of the Business as currently conducted.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of Hazardous Substances (including without limitation, the abandonment or disposal of barrels, containers or other receptacles containing any Hazardous Substances).

"Scissors" shall mean all Company products in existence immediately prior to the Closing that were not manufactured or developed for, or distributed or sold for the benefit of, the Purchaser at any time prior to the Closing.

"Scissors Business" shall mean that segment of the Company's business immediately prior to the Closing relating to the manufacture, marketing, sale and distribution of the Scissors.

"Scissors Transaction" shall mean one or a series of transactions whereby control of or substantially all of the Scissors Business is transferred by the Company to any Person that is not the Purchaser or the Surviving Corporation or an Affiliate of the Purchaser or the Surviving Corporation, including, without limitation, by means of an acquisition, a disposition or exchange of capital stock or assets, a merger or consolidation, or a tender or exchange offer.

"Scissors Transaction Consideration" shall mean the aggregate proceeds or other consideration (whether in cash, stock or other property) received or to be received by the selling party upon the closing of a Scissors Transaction, regardless of when such consideration is received by the selling party. In the event that any of such consideration is stock or other property, such stock or other property will have the value assigned thereto pursuant to the terms of the Scissors Transaction Documentation.

"Scissors Transaction Documentation" shall mean the principal documentation for a Scissors Transaction.

"Shares" shall mean all shares of Company Common Stock outstanding as of a specified date (including all shares issuable pursuant to Options that were exercised as of such date but had not yet been issued).

"Stock Option Plan" means the Company's Stock Option Plan, as amended and/or restated.

"Stockholders" shall mean all holders of Shares as of a specified date (including holders of Options only to the extent such holders had exercised their Options as of such date but had not yet been issued Shares), except that Dissenting Stockholders and Remaining Stockholders shall not be considered Stockholders to the extent that the rights, powers and obligations provided to such Persons under Section 262 of the DGCL are inconsistent with the rights, powers and obligations of Stockholders hereunder.

"Supermajority of the Stockholders" shall mean the holders of at least ninety-five percent (95%) of the shares of Company Common Stock.

"Tax" or "Taxes" shall mean (a) any federal, state, local, or foreign income, gross receipts, business and occupation, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code ss. 59A), customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, and (b) liability in respect of any items described in clause (a) payable by reason of contract assumption, transferee liability, operation of law or Treasury Regulation Section 1.1502-6(a).

"Tax Authority" shall mean the Internal Revenue Service and any other domestic or foreign Governmental Authority responsible for the administration of any Taxes.

"Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"to the knowledge of the Company" or words of similar import shall mean the knowledge that each of the following has or would reasonably be expected to have after due diligence inquiry by such person: Raymond W. Ogle, Michael D. Hooven, Timothy Flaherty, Jon Sherman, Robert Bergen, Mark Friedman and Greg Drach.

"Transaction Documents" shall mean this Agreement, the Escrow Agreement and each of the other agreements, documents and instruments required to be delivered by any of the parties at or before the Closing in accordance with the terms and provisions hereof.

SECTION 1.02 Interpretation.

(a) Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

(b) References to "Article", "Section", "subsection" or "Exhibit" shall be to Articles, Sections, subsections or Exhibits, respectively, of this Agreement, unless otherwise specifically provided.

(c) Any reference to a document includes any amendments or supplements to, or replacements of, such document, but excludes all amendments, supplements or replacements made in violation of this Agreement.

## ARTICLE 2.

## THE MERGER AND RELATED MATTERS

SECTION 2.01 Stockholders' Approval. The Company, acting through its Board of Directors, shall, in accordance with the DGCL and the Company's certificate of

incorporation and by-laws, as soon as is reasonably practicable: (a) seek to obtain approval of the Merger and the Transaction Agreements by the vote or the consent of a Supermajority of the Stockholders, (b) seek to obtain approval of the appointment of the Stockholder Representative as representative, proxy, agent and attorney-in-fact of the Stockholders as provided in Section 2.07 by the vote or the consent of a Supermajority of the Stockholders, (c) subject to its fiduciary duties under applicable laws, recommend to the Stockholders approval of the Merger and the Transaction Documents and the appointment of the Stockholder Representative, and (d) distribute to the Stockholders appropriate materials to facilitate the surrender of the certificates representing the Shares. The Company will provide the Purchaser copies (in no event later than thirty (30) days prior to the Closing Date) of all resolutions and disclosure materials delivered to Stockholders in the solicitation of the Stockholders' approval of the Merger (the "Stockholder Solicitation Materials").

SECTION 2.02 The Merger. Upon the terms and subject to the conditions of this Agreement, and in accordance with the DGCL, at the Effective Time the Company shall be merged with and into the Purchaser. As a result of the Merger, the separate corporate existence of the Company shall cease and the Purchaser shall continue as the surviving corporation of the Merger (the Purchaser from and after the Effective Time hereinafter referred to as the "Surviving Corporation"). Purchaser may, upon notice to the Company, modify the structure of the Merger if the Purchaser determines it advisable to do so because of tax or other considerations, and the Company shall promptly enter into any amendment to this Agreement necessary or desirable to accomplish such structure modification; provided, however, that no such amendment shall amend or change any material provision of this Agreement (including the Merger Consideration) other than any provision relating solely to the structure of the Merger; and provided, further, that in the event of any such modification of structure, for purposes of determining whether the condition set forth in Section 9.01 has been satisfied, the accuracy of the Company's representations and warranties shall be determined (unless the Company otherwise reasonably agrees) as if such modification had not been made.

SECTION 2.03 Effective Time. Upon the terms and subject to the conditions of this Agreement, as soon as practicable on or after the Closing Date the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") substantially in the form attached hereto as Exhibit 2.02 with the Secretary of State of the State of Delaware, in such form as is required by, and executed in accordance with the applicable provisions of, the DGCL (the date and time of such filing being hereinafter referred to as the "Effective Time").

SECTION 2.04 Effect of the Merger; Company Name.

(a) At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of the Company shall vest in the Surviving Corporation, and all debts, liabilities, obligations and duties of the Company shall become the debts, liabilities, obligations and duties of the Surviving Corporation.

(b) Notwithstanding anything in this Agreement to the contrary, on and after the Effective Time (i) Michael Hooven or his designee may use the name “Enable” or “Enable Medical” as the name (or a part thereof) of any entity incorporated or formed by Mr. Hooven or his designee and (ii) the Surviving Corporation shall not use the name “Enable” or “Enable Medical” as any part of its corporate name or any fictitious name.

SECTION 2.05 Certificate of Incorporation; By-laws.

(a) At the Effective Time, the certificate of incorporation of the Purchaser, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL and such certificate of incorporation, and subject to Section 6.03 hereof.

(b) At the Effective Time, the by-laws of the Purchaser, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL, the certificate of incorporation and such by-laws, and subject to Section 6.03 hereof.

SECTION 2.06 Directors and Officers. The directors and officers of the Purchaser immediately prior to the Effective Time shall be the initial directors and officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and by-laws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified.

SECTION 2.07 Stockholder Representative.

(a) Upon approval of the appointment of the Stockholder Representative (as defined below) by a Supermajority of the Stockholders, and effective upon such approval without further act of any Stockholder, Raymond W. Ogle shall be appointed as their true and lawful representative, proxy, agent and attorney-in-fact (the “Stockholder Representative”) for a term that shall be continuing and indefinite and without a termination date except as otherwise provided herein, to act for and on behalf of the Stockholders in connection with or relating to the Transaction Documents and the Merger and the transactions and actions contemplated thereby including, without limitation, to give and receive notices and communications, to receive and accept service of legal process in connection with any proceeding arising under the Transaction Documents or in connection with the Merger, to receive from the Purchaser, and distribute to the Stockholders and/or any Option holder, the Closing Merger Consideration, to authorize delivery of cash from the Escrow Amount in satisfaction of claims by a Purchaser Indemnified Party pursuant to Article 10 hereof, to object to or accept any claims by a Purchaser Indemnified Party pursuant to Article 10 hereof, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such amounts or claims, to receive from the Escrow Agent, and distribute to the Stockholders, the Escrow Amount (if any), and to take all actions necessary or appropriate in the sole opinion of the Stockholder Representative for the accomplishment of the foregoing. Such agency may be changed at any time and from time to time by the action of Stockholders holding more than fifty percent (50%) of the issued and outstanding Shares that approved the Merger, and shall become effective upon not less than thirty (30) days prior written notice to the Purchaser. Except as

provided in the foregoing sentence, in the event that for any reason the most recent Stockholder Representative shall no longer be serving in such capacity, including, without limitation, as a result of the death, resignation or incapacity of the Stockholder Representative, the outgoing Stockholder Representative shall appoint a successor Stockholder Representative, and if the outgoing Stockholder Representative fails or is unable to appoint a successor, then the Stockholders holding more than fifty percent (50%) of the issued and outstanding Shares that approved the Merger shall appoint such successor, such that at all times there will be a Stockholder Representative with the authority provided hereunder. Any change in the Stockholder Representative pursuant to the foregoing sentence shall become effective upon delivery of written notice of such change to the Purchaser. Notices or communications to or from the Stockholder Representative by or to any of the parties to the Transaction Documents shall constitute notice to or from each of the Stockholders.

(b) Notwithstanding anything in this Agreement to the contrary, in no event shall the Stockholder Representative be personally liable (whether pursuant to Article 10 or otherwise) for any act done or omitted hereunder except pursuant to this Section 2.07(b). The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative in the absence of gross negligence or willful misconduct on his or her part (which shall be deemed not to exist if the Stockholder Representative acted in good faith). The Stockholders shall jointly and severally indemnify the Stockholder Representative and hold the Stockholder Representative harmless from and against any and all damages, actions, proceedings, demands, liabilities, losses, taxes, fines, penalties, costs, claims and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) (collectively, “Losses”) that may be sustained or suffered by the Stockholder Representative in connection with the administration of its duties hereunder, except where such Losses arise from or are the result of the Stockholder Representative’s gross negligence or willful misconduct (which shall be deemed not to exist if the Stockholder Representative acted in good faith). In the event that the Stockholder Representative incurs Losses indemnified by the Stockholders pursuant to the preceding sentence, and in lieu of bringing a direct action against the Stockholders, the Stockholder Representative may, upon at least sixty (60) days’ prior notice to the Stockholders, the Purchaser (or, if applicable, the Surviving Corporation) and the Escrow Agent, obtain reimbursement of such Losses from the Escrow Amount.

(c) Any decision, act, consent or instruction taken or given by the Stockholder Representative pursuant to this Agreement shall be and constitute a decision, act, consent or instruction of all Stockholders and shall be final, binding and conclusive upon each such Stockholder, and the Escrow Agent and the Purchaser may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of each and every Stockholder. The Escrow Agent and the Purchaser are hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative, provided that such acts are taken in good faith and absent gross negligence and willful misconduct on the part of the Escrow Agent and the Purchaser, respectively.

**ARTICLE 3.**

**PAYMENTS AND DIVIDENDS; CONVERSION OF SHARES**

SECTION 3.01 Pre-Signing Cash Dividend; Covenant Payment.

(a) In addition to the Pre-Closing Cash Dividend that may be paid by the Company to the Stockholders in accordance with Section 3.02, the Company shall be entitled to make a one-time cash dividend of no more than Five Hundred Thousand Dollars ($500,000) to the Stockholders (of record as of December 9, 2004) no later than January 31, 2005 (the "Pre-Signing Cash Dividend").

(b) In accordance with Article 15, the Purchaser shall pay Five Hundred Thousand Dollars ($500,000) (the "Covenant Payment") to the Company as consideration for the Company's covenants in Article 7.

SECTION 3.02 Pre-Closing Cash Dividend.

(a) In addition to the Pre-Signing Cash Dividend as provided in Section 3.01(a), the Company shall be entitled to pay a cash dividend of no more than Five Hundred Thousand Dollars ($500,000) to the holders of Shares and Options immediately prior to the Closing (the "Pre-Closing Cash Dividend"), provided that, after such dividend is paid, (i) the sum of the Company's cash plus accounts receivable equals at least the Company's total liabilities (exclusive of the Company's stockholders' equity) and (ii) the stockholders' equity of the Company equals at least Five Hundred Thousand Dollars ($500,000).

(b) For purposes of determining whether conditions (i) and (ii) of Section 3.02(a) have been or will be satisfied, the Company shall rely upon the Closing Date Balance Sheet. In the event that the Company distributes the Pre-Closing Cash Dividend and either of such conditions is determined in good faith by the Purchaser or the Surviving Corporation not to be fully satisfied (after consultation with the Stockholder Representative), then, upon notice to the Stockholder Representative and the Surviving Corporation, the Purchaser shall deduct from the Escrow Amount the difference between (x) the amount of the Pre-Closing Cash Dividend actually distributed and (y) the maximum amount, if any, that could have been distributed in accordance with Section 3.02(a).

SECTION 3.03 Purchaser Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the Purchaser, the Company or the Stockholders, each share of Purchaser Common Stock issued and outstanding immediately prior to the Effective Time shall be one (1) validly issued, fully paid and nonassessable share of common stock, $0.01 par value per share, of the Surviving Corporation. Any options, warrants or other rights to purchase shares of Purchaser Common Stock granted and outstanding immediately prior to the Effective Time shall be, on and after the Effective Time, deemed to be rights to purchase such shares of capital stock of the Surviving Corporation in accordance with the conversion formula set forth in the preceding sentence. Each certificate evidencing ownership of shares of Purchaser Common Stock shall, on and after the Effective Time, evidence ownership of such shares of capital stock of the Surviving Corporation.

SECTION 3.04 Conversion of Company Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the Purchaser, the Company or the Stockholders:

(a) Each Share outstanding immediately prior to the Closing Date (other than any Shares to be cancelled pursuant to Section 3.04(c), any Remaining Shares and any Dissenting Shares) shall be cancelled and converted automatically into the right to receive a *pro rata* portion of the Closing Merger Consideration equal to (subject to subsection (b) below) one (1) divided by the total number of Shares outstanding immediately prior to the Closing Date; and each Stockholder (except for the Remaining Stockholders and the Dissenting Stockholders) shall thereafter cease to have any rights as a Stockholder, other than (x) the rights to receive a per share *pro rata* portion of the Closing Merger Consideration as herein provided upon surrender of the certificate or certificates evidencing such Shares or the execution and delivery to the Company of an affidavit of lost certificate or agreement in the form attached hereto as Exhibit 3.04(a) (the "Affidavit of Lost Certificate"), subject to Section 3.07(d), (y) the rights to receive a per share *pro rata* portion of the Escrow Amount in accordance with Section 3.06(c) and the terms of the Escrow Agreement and (z) any other rights granted to the Stockholders pursuant to this Agreement and the other Transaction Documents.

(b) In lieu of the calculation for the distribution to the Stockholders of a *pro rata* portion of the Closing Merger Consideration set forth in subsection (a) above, the Stockholder Representative may pay a portion of the Closing Merger Consideration to the holders of outstanding, "in-the-money" Options (and terminate such Options), and pay the remainder of such consideration to the Stockholders, as described in the Stockholder Solicitation Materials and approved by a Supermajority of the Stockholders. No later than seven (7) business days prior to the Closing Date, the Company shall furnish the Purchaser with the exact amount of the distributions of the Closing Merger Consideration to each such Option holder and each such Stockholder and the calculations therefor.

(c) Each Share held in the treasury of the Company immediately prior to the Closing Date shall be cancelled without any conversion thereof and no payment or distribution shall be made with respect thereto.

Notwithstanding anything in this Agreement to the contrary, and subject only to Sections 3.07(b) and 3.07(d): (i) the Stockholder Representative shall be solely responsible for the distribution of the Merger Consideration to the Stockholders and any Option holder in accordance with the terms of this Agreement and the Stockholder Solicitation Materials and (ii) neither the Purchaser nor the Surviving Corporation shall have any obligation hereunder with respect to the distribution of any portion of the Merger Consideration to the Stockholders or any Option holder. AS A CONSEQUENCE OF THE FOREGOING, AND SUBJECT ONLY TO SECTIONS 3.07(B) AND 3.07(D), NEITHER THE PURCHASER NOR THE SURVIVING CORPORATION SHALL HAVE ANY LIABILITY TO THE STOCKHOLDERS OR ANY OPTION HOLDER WITH RESPECT TO THE DISTRIBUTION OF THE MERGER CONSIDERATION TO THEM.

SECTION 3.05 Remaining Shares; Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, Shares that are outstanding immediately prior to the Closing Date and which are held by Stockholders who have not provided their written consent to the Merger on or prior to the Effective Time in accordance with the DGCL and the Company's certificate of incorporation and by-laws (collectively, the "Remaining Stockholders" and such shares, the "Remaining Shares") shall not be converted into or represent the right to receive a per share *pro rata* portion of the Merger Consideration. Remaining Stockholders who shall have demanded properly in writing an appraisal of their Shares (the "Dissenting Shares") in accordance with Section 262 of the DGCL (collectively, the "Dissenting Stockholders") shall be entitled to receive payment of the appraised value of the Dissenting Shares held by them in accordance with the provisions of such Section 262; provided, however, that all (i) Remaining Stockholders who are not Dissenting Stockholders and (ii) Dissenting Stockholders who shall have failed to perfect or who effectively have withdrawn or lost their rights to appraisal of their Dissenting Shares under such Section 262, shall thereupon be deemed to be Stockholders who have consented to the Merger and this Agreement, they shall no longer be deemed Remaining Stockholders or Dissenting Stockholders, their Shares shall no longer be deemed Dissenting Shares or Remaining Shares, and such Stockholders shall thereupon have the right to receive a per share *pro rata* portion of the Merger Consideration pursuant to Section 3.04 hereof, without any interest thereon, upon surrender of the certificate or certificates evidencing such Shares or the execution and delivery to the Company of an Affidavit of Lost Certificate, subject to Section 3.07(d).

(b) The Company shall give the Purchaser: (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments related thereto served pursuant to the DGCL and received by the Company and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of the Purchaser, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

SECTION 3.06 Closing; Payment of Merger Consideration. The closing of the Merger (the "Closing") shall take place at 10:00 a.m. New York City time at the offices of Epstein Becker & Green, P.C., 250 Park Avenue, New York, New York, within one (1) business day after all conditions to Closing shall have been satisfied or waived, or at such other time or on such other date or at such other place as the parties hereto may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date"). At Closing, the Purchaser shall:

(a) pay to the Stockholder Representative, for distribution to the Stockholders and, pursuant to Section 3.04(b), certain Option holders, in accordance with and subject to Section 3.07, the Closing Merger Consideration; and

(b) deposit an aggregate amount of One Million Five Hundred Thousand Dollars ($1,500,000) (the "Escrow Deposit") in escrow with Epstein Becker & Green, P.C. as escrow agent (the "Escrow Agent"), pursuant to the terms of an escrow agreement substantially in the form of Exhibit 3.06 hereto (the "Escrow Agreement"), among the Purchaser, the

Stockholder Representative and the Escrow Agent, as security for the Stockholders' indemnification obligations arising under Article 10 hereof, and as satisfaction for other amounts contemplated by this Agreement. The amount held in escrow by the Escrow Agent at any time and from time to time shall be referred to as the "Escrow Amount."

(c) In the event that either (i) the Company does not make a Pre-Closing Cash Dividend or (ii) the Company makes a Pre-Closing Cash Dividend and the Purchaser or the Surviving Corporation has not given notice to the Stockholder Representative (in accordance with Section 3.02(b)) that it has deducted the amount of such Pre-Closing Cash Dividend from the Escrow Amount, then, in either such case, on the first business day which falls six (6) months after the Closing Date, the Surviving Corporation shall instruct the Escrow Agent to release and deliver to the Stockholder Representative for distribution to the Stockholders (*pro rata* based on the total number of Shares outstanding as of the Closing Date), Five Hundred Thousand Dollars ($500,000) of the Escrow Amount. Eighteen (18) months after the Closing Date, the Escrow Agent shall release and deliver to the Stockholder Representative for distribution to the Stockholders (*pro rata* based on the total number of Shares outstanding as of the Closing Date) the remaining balance of the Escrow Amount, if any, less the amount of any pending indemnification claims properly made by a Purchaser Indemnified Party pursuant to Article 10. As any pending indemnification claims are resolved, the Escrow Agent shall, after making any payment related to such claims, release and deliver to the Stockholder Representative for distribution to the Stockholders (*pro rata* based on the total number of Shares outstanding as of the Closing Date) any amounts remaining from the amounts reserved for such claims.

SECTION 3.07 Surrender of Shares.

(a) Pursuant to Section 3.06, the Purchaser shall pay to the Stockholder Representative on the Closing Date, for the benefit of the Stockholders and, pursuant to Section 3.04(b), certain Option holders, the Closing Merger Consideration, in immediately available funds to the account designated by the Stockholder Representative or his or her designee. Each Stockholder whose Shares were converted pursuant to Section 3.04 or who are deemed to be Stockholders who have consented to the Merger pursuant to Section 3.05 shall thereafter surrender to the Stockholder Representative or his or her designee the certificate representing such Shares or an Affidavit of Lost Certificate. Each Option holder whose Option was exercised and terminated pursuant to Section 3.04(b) shall thereafter surrender to the Stockholder Representative or his or her designee the stock option agreement(s) representing such Options or an Affidavit of Lost Certificate. Upon the delivery of such certificate, agreement or Affidavit of Lost Certificate, the Stockholder Representative shall pay to the holder of such Shares or such Options in exchange therefor the amount due such holder as set forth in Section 3.04(a) or 3.04(b), by check or wire transfer to the account designated in writing by such holder, subject to subsection (d) below.

(b) In the event that appraisal and payment rights with respect to the Dissenting Shares are duly exercised pursuant to Section 262 of the DGCL:

(i) the Stockholder Representative shall promptly deliver to the Surviving Corporation that portion of the Closing Merger Consideration which is equal to the

product of (x) the percentage of the Shares outstanding at Closing represented by the Dissenting Shares (the "Appraisal Percentage") and (y) the Closing Merger Consideration;

(ii) in the event that the Stockholder Representative is entitled to receive a portion of the Escrow Amount from the Purchaser from time to time, the Purchaser shall be entitled to withhold the portion of such amount that is equal to the product of (x) the Appraisal Percentage and (y) such amount, if any; and

(iii) if the Escrow Amount is received from a third party, including from the Escrow Agent, the Stockholder Representative shall promptly deliver to the Surviving Corporation the portion of such amount that is equal to the product of (x) the Appraisal Percentage and (y) such amount, if any;

(any amounts delivered or withheld pursuant to subsections (b)(i), (b)(ii) and (b)(iii) collectively referred to hereinafter as the "Appraisal Consideration").

Subject to Article 10, the Surviving Corporation shall be solely responsible for payment of all amounts in the event that appraisal and payment rights with respect to the Dissenting Shares are duly exercised pursuant to Section 262 of the DGCL (including amounts in excess of the Appraisal Consideration) and shall indemnify the Stockholder Representative and the Stockholders, and hold the Stockholder Representative and the Stockholders harmless from and against, any and all Losses relating to, or arising as a result of a claim by, the Dissenting Stockholders.

(c) At the Closing Date, the stock transfer books of the Company shall be closed and there shall not be any further registration of transfers of any Shares thereafter on the records of the Company. From and after the Effective Time, the holders of certificates evidencing ownership of Shares shall cease to have any rights with respect to such Shares, except as otherwise provided for herein or by applicable law. If, after the Effective Time and through the eighteen (18) month anniversary of the Effective Time, such certificates or Affidavits of Lost Certificates are presented to the Surviving Corporation, they shall be delivered to the Stockholder Representative and canceled and exchanged for any cash payment due from the Stockholder Representative as provided in this Section 3.07. No Stockholder shall be entitled to receive interest on any cash payable upon the surrender of certificates representing Shares or the execution and delivery of Affidavits of Lost Certificates.

(d) If any Stockholder (except any Dissenting Stockholder) fails to surrender and exchange certificate(s) evidencing such Shares, or fails to execute and deliver Affidavits of Lost Certificate(s) by the later (such later date, the "Final Distribution Date") of (i) the third anniversary of the Closing Date and (ii) the date upon which the last claim for indemnity by a Stockholder Indemnified Party brought in accordance with Article 10 is resolved, immediately after the Final Distribution Date the Stockholder Representative shall deliver to the Surviving Corporation that portion of the Merger Consideration (including any interest received with respect thereto) which had been delivered to the Stockholder Representative for disbursement to such holders, and thereafter such holders shall only be entitled to look to the Surviving Corporation as general creditors thereof (subject to abandoned property, escheat or similar laws) to receive amounts payable upon due surrender of the certificates representing their Shares or the

execution and delivery of Affidavits of Lost Certificates, and shall not be entitled to receive any interest thereon. Notwithstanding the foregoing, neither the Surviving Corporation nor the Stockholder Representative shall be liable to any Stockholder for amounts to which such Stockholder is entitled under Section 3.04 that have been delivered to a public official pursuant to the requirements of applicable abandoned property, escheat or similar law.

SECTION 3.08 Tax Withholding. The Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable with respect to any Stockholder or any Option holder pursuant to this Agreement (including, without limitation, any amount paid to the Stockholder Representative for the benefit of any Stockholder or any Option holder) such amounts that the Purchaser may be required to deduct and withhold with respect to the making of such payment under any provision of law. If the Purchaser withholds any such amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the Stockholder or such Option holder in respect of which the Purchaser made such deduction and withholding. On or prior to the Closing Date, the Stockholder Representative shall provide the Purchaser with any information reasonably requested by the Purchaser in writing regarding the exercise or cancellation of any Option for which the full amount of withholding taxes has not been paid in cash by the holder of such Option, including, without limitation, the method of exercise and the number of Shares issued (or deemed issued) to such Option holder.

SECTION 3.09 Aggregate Consideration Received by Stockholders. Notwithstanding anything in this Agreement to the contrary, except pursuant to Article 4, in no event shall the Stockholders be entitled to receive pursuant to this Agreement (whether before or after the Closing) aggregate consideration with respect to their Shares (whether by virtue of the Pre-Signing Cash Dividend, the Pre-Closing Cash Dividend, the Merger Consideration or otherwise) that exceeds Seven Million Dollars ($7,000,000) (or Seven Million Five Hundred Thousand Dollars ($7,500,000) if the Closing occurs on or after July 1, 2005).

## ARTICLE 4.

## POTENTIAL DISPOSITION OF SCISSORS BUSINESS

SECTION 4.01 Scissors Transaction On or Prior to the Closing Date.

(a) In the event that at any time on or prior to the Closing Date, a definitive, binding agreement with respect to a Scissors Transaction is signed with ConMed Corporation, then all Scissors Transaction Consideration shall be placed in escrow with Epstein Becker & Green, P.C. as escrow agent (the "Scissors Escrow Agent"), pursuant to the terms of an escrow agreement substantially in the form of Exhibit 4.01 hereto (the "Scissors Escrow Agreement").

(b) The Scissors Escrow Agreement shall provide that (i) all Scissors Transaction Consideration will be held in escrow until the earlier of (x) the Closing Date and (y) January 1, 2006; (ii) if the Closing Date occurs prior to January 1, 2006, then fifty percent (50%) of all Scissors Transaction Consideration shall be distributed by the Scissors Escrow Agent to the Surviving Corporation and fifty percent (50%) of all Scissors Transaction Consideration shall be distributed by the Scissors Escrow Agent to the Stockholder Representative, immediately after the Closing Date and for as long as any such consideration (including royalty payments) is

payable pursuant to the terms of the Scissors Transaction Documentation; and (iii) if January 1, 2006 occurs and the Closing Date has not occurred prior to such date, then one hundred percent (100%) of all Scissors Transaction Consideration shall be distributed by the Scissors Escrow Agent to the Stockholder Representative, immediately after January 1, 2006 and for as long as any such consideration (including royalty payments) is payable pursuant to the terms of the Scissors Transaction Documentation.

SECTION 4.02 Scissors Transaction after the Closing Date.

(a) In the event that at any time after the Closing Date but prior to the third (3rd) anniversary of the Closing Date, a Scissors Transaction is consummated with Scissors Transaction Consideration of more than One Million Dollars ($1,000,000), then fifty percent (50%) of all Scissors Transaction Consideration in excess of One Million Dollars ($1,000,000) but less than Five Million Dollars ($5,000,000) shall be distributed to the Stockholder Representative for as long as any such consideration (including royalty payments) is payable pursuant to the terms of the Scissors Transaction Documentation, at such time(s) when such Scissors Transaction Consideration is distributed to the Purchaser or the Surviving Corporation (or their stockholders or designees). Notwithstanding the foregoing in this Section 4.01(a), and subject only to subsection (b) below, the Purchaser shall provide the Stockholder Representative with at least thirty (30) days prior written notice (including all material terms of such potential transaction, the "Potential Scissors Transaction Notice") of the potential consummation of a Scissors Transaction, and the directors of the Company immediately prior to the Closing (who shall be notified by the Stockholder Representative) shall have a right of first refusal (which (i) may be exercised only once and (ii) must be exercised by written notification to the Purchaser within thirty (30) days of the date that the Potential Scissors Transaction Notice was received by the Stockholder Representative) to acquire the Scissors Business upon such terms (including consideration) no less favorable to the Purchaser than those terms set forth in the Potential Scissors Transaction Notice.

(b) Notwithstanding subsection (a) above, in the event that, at any time after the Closing Date but prior to the third (3rd) anniversary of the Closing Date, any business of the Purchaser or the Surviving Corporation is sold along with the Scissors Business to any Person which is not an Affiliate of the Purchaser or the Surviving Corporation, then the Board of Directors of the Purchaser shall reasonably and in good faith allocate a portion of such purchase price to that amount attributable to the sale of the Scissors Business; provided, however, that (i) the Scissors Business must account for at least Eight Hundred and Fifty Thousand Dollars ($850,000) in annual gross revenues to the Surviving Corporation in order for any such purchase price to be allocated to the sale of the Scissors Business and (ii) in no event shall the allocated portion of such purchase price exceed Two Million Dollars ($2,000,000). Such allocated portion of the purchase price shall be distributed to the Stockholder Representative for as long as any such consideration (including royalty payments) is payable pursuant to the terms of the documentation for such sale, at such time(s) when such purchase price is distributed to the Purchaser or the Surviving Corporation (or their stockholders or designees).

SECTION 4.03 Miscellaneous.

(a) Nothing in this Agreement shall obligate the Purchaser or the Surviving Corporation in any way (whether before or after the Effective Time) to operate or sell the Scissors Business or to manufacture, market, sell or distribute the Scissors.

(b) Notwithstanding anything in this Agreement to the contrary: (i) the Stockholder Representative shall be solely responsible for the distribution of the Scissors Transaction Consideration to the Stockholders in accordance with the terms of this Agreement and (ii) neither the Purchaser nor the Surviving Corporation shall have any obligation hereunder with respect to the distribution of any portion of the Scissors Transaction Consideration to the Stockholders. AS A CONSEQUENCE OF THE FOREGOING, NEITHER THE PURCHASER NOR THE SURVIVING CORPORATION SHALL HAVE ANY LIABILITY TO THE STOCKHOLDERS WITH RESPECT TO THE DISTRIBUTION OF THE SCISSORS TRANSACTION CONSIDERATION TO THEM.

## ARTICLE 5.

## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants that:

SECTION 5.01 Organization.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and duly authorized to carry on the business presently conducted by it. The Company is qualified to do business in every other jurisdiction in which the nature of its business or location of its properties requires such qualification, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect on the Company. The copies of the Company's certificate of incorporation and by-laws that have been furnished to the Purchaser are correct and complete and reflect all amendments made thereto at any time prior to the date of this Agreement.

(b) The Company has no subsidiaries and does not otherwise hold any equity interests, directly or indirectly, in any entity.

SECTION 5.02 Capital. The authorized capital stock of the Company consists of 10,000,000 shares of Company Common Stock. As of the date hereof, 6,661,375 shares of Company Common Stock are issued and outstanding, all of which are duly authorized and validly issued, fully paid and nonassessable, and were issued in compliance with all applicable federal, state and foreign securities laws, except for such instances of noncompliance which would not reasonably be expected to have a Materially Adverse Effect. As of the date hereof, the Company had reserved an aggregate of 1,500,000 shares of Company Common Stock for issuance pursuant to the Stock Option Plan. Stock options to purchase Shares granted under the Stock Option Plan are referred to in this Agreement as "Options." As of the date hereof, there were outstanding Options, all of which are fully vested, to purchase an aggregate of 1,434,300 shares of Company Common Stock. The outstanding shares of Company Common Stock described above are the sole outstanding shares of capital stock of the Company and, except for the Options, there are no outstanding options, warrants, agreements, conversion rights,

preemptive rights, or other rights issued by the Company that may permit or require any Person, now or in the future to subscribe for, purchase or otherwise acquire any other securities of the Company. All shares of Company Common Stock subject to issuance upon exercise of the Options, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassessable. Schedule 5.02(a) lists for each holder of Options as of the date hereof: (i) the name of such holder, (ii) the number of Options held by such holder and (iii) the exercise price of the Options.

SECTION 5.03 Authority and Enforceability. The Company has all necessary corporate power and authority to execute and deliver the Transaction Documents, to perform its obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery of the Transaction Documents by the Company, the performance of its obligations thereunder, and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all requisite corporate action on the part of the Company (other than, with respect to the Merger, the approval of the Merger and the adoption of this Agreement by the Stockholders). The Transaction Documents have been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the Purchaser and the Stockholder Representative and approval by the Stockholders) constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

SECTION 5.04 No Conflict. Except as set forth on Schedule 5.04, the execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby do not and will not (i) conflict with or violate any provisions of its certificate of incorporation or by-laws, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to any other Person any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party, or by which any property or asset of the Company is bound, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which the Company is subject, or by which any property or asset of the Company is bound.

SECTION 5.05 Consents and Approvals. Except as set forth on Schedule 5.05, the execution, delivery and performance of this Agreement by the Company does not require, as a condition to its validity or effectiveness, any consent or authorization of, filing with, approval by, notification to or registration with, any Person by the Company that has not been obtained or made.

SECTION 5.06 Financial Information. The Company has provided to the Purchaser complete copies of the unaudited balance sheets of the Company for the fiscal years ended as of December 31, 2003 and December 31, 2004, and the related unaudited statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such years, together with all related notes and schedules thereto (collectively

referred to herein as the "Financial Statements"). The Financial Statements (i) present fairly the financial condition and results of operations of the Company as of the dates thereof or for the periods covered thereby, and (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved. As of the dates of the Financial Statements, the Company has no liability or obligation of any nature (absolute, accrued or contingent) that is not fully reflected, accrued or disclosed in the Financial Statements, to the extent required in accordance with GAAP. The Company maintains systems of accounting to permit preparation of financial statements in conformity with GAAP, including maintenance of proper books and records.

SECTION 5.07 Absence of Change. Except as set forth in Schedule 5.07 or as otherwise expressly provided in this Agreement and the other Transaction Documents, since December 31, 2004, the Company has operated in the ordinary course of its business consistent with its past practices and without limiting the foregoing, there has not been:

(a) except as provided in Article 3, any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of the capital stock of the Company, or any purchase, redemption or other acquisition by the Company of any of the Company's capital stock or any other securities of the Company, or any issuance of any options, warrants, calls or rights to acquire any such shares or other securities, except for the issuance of Shares pursuant to the exercise of Options, if any;

(b) any purchase or sale or other disposition, or any agreement or other legally binding arrangement for the purchase, sale or other disposition, of any of the material properties or material assets of the Company, other than in the ordinary course of business;

(c) any damage, destruction or loss, not covered by insurance, of any material asset of the Company;

(d) any change by the Company in its accounting methods, principles or practices, except as required by concurrent changes in GAAP (or the applicability thereof);

(e) any oral or written notice that there has been or will be a loss of, or contract cancellation by, any current customer, supplier or licensor of the Company, which loss or cancellation would result in lost revenues to the Company of at least Fifty Thousand Dollars ($50,000);

(f) any agreement to enter into any material transaction, agreement or commitment other than in the ordinary course of business by the Company;

(g) other than in the ordinary course of business and consistent with past practice of the Company, grant of any increase in the compensation of officers, directors, employees or consultants of the Company;

(h) any borrowing of funds, assuming or becoming subject to, whether directly or by way of guarantee or otherwise, any liabilities or obligations (absolute, accrued or contingent), or incurring any liabilities or obligations (absolute, accrued or contingent) except

borrowings, liabilities and obligations incurred in the ordinary course of business and consistent with past practice, by the Company;

(i) payment, discharge or satisfaction of any claims, liabilities or obligations (absolute, accrued or contingent) other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of claims, liabilities and obligations reflected or reserved against in the Financial Statements or incurred in the ordinary course of business and consistent with past practice since the date of the Financial Statements; or

(j) any agreement or understanding whether in writing or otherwise, by the Company to take any of the actions specified in subsections (a) through (i) above.

SECTION 5.08 Employees. Schedule 5.08 contains a complete and accurate list of all of the employees of the Company as of the date indicated thereon (which date shall be not more than thirty (30) days prior to the date of this Agreement) (including each employee on leave of absence or layoff status), including such employee's name, job title, current compensation, a list of any written employment agreement to which he or she is a party and the nature of such employee's participation in any Plans. Except as set forth in Schedule 5.08, the Company has no oral or written employment agreement or arrangements with any Person. The Company has delivered to the Purchaser true and complete copies of all such agreements or arrangements (when oral, reduced to writing with respect to all material terms thereof).

SECTION 5.09 Sales Representatives, Dealers and Distributors. Except as set forth in Schedule 5.09 and as of the date indicated thereon (which date shall be no more than thirty (30) days prior to the date of this Agreement), the Company is not a party to any contract or agreement with any Person under which such other Person is a sales agent, representative, dealer or distributor of any of the products or services of the Company (collectively the "Sales Representative Agreements"), as the case may be, which by its terms either (i) cannot be terminated on less than ninety (90) days prior notice or (ii) requires an additional payment as a result of termination, and there has been no change in the rate of compensation paid or payable to any such Person since January 1, 2004, other than in the ordinary course of business and consistent with past practice of the Company. The parties acknowledge and agree that applicable local law may require additional notice or termination payments that are not reflected in the terms of the Sales Representative Agreements, and no such requirement, nor the failure to disclose such requirement on Schedule 5.09, shall result in a breach of this Section 5.09.

SECTION 5.10 Brokers. Except as set forth on Schedule 5.10, no broker, finder or investment bank is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

SECTION 5.11 Litigation. Except as set forth in Schedule 5.11, there is no action, suit, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company before or by any Governmental Authority that (i) relates to or challenges the legality, validity or enforceability of this Agreement, (ii) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, or

(iii) would, individually or in the aggregate, reasonably be expected to impair the ability of the Company to perform on a timely basis its obligations under this Agreement. To the knowledge of the Company, there is no valid basis for any claim described in the preceding sentence. Except as set forth on Schedule 5.11, as of the date hereof, the Company is not subject to any outstanding Governmental Order.

SECTION 5.12 Title to Properties. Except as set forth on Schedule 5.12, the Company has good and valid, and sole and exclusive, title, free and clear of all Liens, to its owned personal property and assets (other than the Leases which are addressed in Section 5.26) reflected in the December 31 Balance Sheet, except for (i) assets that have been disposed of since December 31, 2004 in the ordinary course of business and (ii) Liens reflected in the December 31 Balance Sheet.

SECTION 5.13 Personal Property Leases. Except as set forth in Schedule 5.13, all of the personal property leased to the Company is subject to leases which are valid and in full force and effect assuming due authorization, execution and delivery by the counterparties to such leases, and to the knowledge of the Company no event has occurred which, with notice or lapse of time or both, would constitute a material default under any of these leases.

SECTION 5.14 Inventory. The inventories of items shown on the December 31 Balance Sheet and any other inventory acquired by the Company since the date thereof, up to but not including the date of this Agreement, consist of items of a quality, quantity and condition useable or salable in the ordinary course of business by the Company, except for all obsolete, unusable, not readily salable or below-standard quality items, all of which have been either written-off or written down to net realizable value or for which adequate reserves have been established in the December 31 Balance Sheet or on the books of the Company, as the case may be, all in accordance with GAAP. All items included in the inventories on the December 31 Balance Sheet are the property of the Company free and clear of all Liens, except for items sold in the ordinary course of business since December 31, 2004, and for each of these sales either the purchaser of the items has made full payment therefor or the purchaser's liability to make payment is reflected in the books of the Company. Except as set forth in Schedule 5.14 or the December 31 Balance Sheet, no items included in the inventories on the December 31 Balance Sheet have been pledged as collateral, held by the Company on consignment from others or otherwise subject to any Liens.

SECTION 5.15 Customers. Schedule 5.15 sets forth a complete and current list of each customer of the Company that accounted for more than five percent (5%) of the gross revenues of such company for the fiscal year ended December 31, 2004. To the knowledge of the Company, except as indicated in Schedule 5.15, none of these customers intends to cease doing business or materially and adversely modify its business relationship with the Company.

SECTION 5.16 Contracts.

(a) The Company has provided true and correct copies of each of the Material Contracts in existence as of the date of this Agreement to the Purchaser.

(b) To the knowledge of the Company, all Material Contracts are valid, binding and enforceable in accordance with their terms against each party thereto and are in full force and effect. Other than as set forth on Schedule 5.16, the Company is not in violation or in default of, or has failed to perform any material obligation under, any Material Contract, and nothing has occurred and is continuing that with lapse of time or the giving of notice or both would constitute a breach or default of a Material Contract by the Company. To the knowledge of the Company, no material breach or default by any other party to any such Material Contract of any provision thereof, nor any condition or event that, with notice or lapse of time or both, would constitute such a breach or default, has occurred and is continuing.

(c) Except as set forth on Schedule 5.16, the Company has no powers of attorney outstanding (other than those issued in the ordinary course of business (i) with respect to Tax or Intellectual Property matters or (ii) that are customary in connection with customs and export and import matters).

SECTION 5.17 Permits. The Company has delivered to the Purchaser true and complete copies of all material Permits issued to the Company that are in effect and such delivered Permits constitute all of the material Permits required as of the date hereof for the Company to conduct the Business as currently conducted. There are no defaults existing under such Permits and the Company has not received any notice nor does the Company have any knowledge that the issuer of any such Permit intends to suspend, withdraw, limit in any form or terminate any such Permit.

SECTION 5.18 Accounts Receivable. All accounts receivable (the “Receivables”) of the Company reflected on the December 31 Balance Sheet and those incurred thereafter represent amounts due for services performed or sales actually made by the Company. Except as set forth in Schedule 5.18 and as of the date indicated thereon (which date shall be no more than thirty (30) days prior to the date of this Agreement), there are no individual Receivables that are more than ninety (90) days past due. Except as set forth in Schedule 5.18 or as disclosed in the December 31 Balance Sheet, no agreement for deduction, free goods, discount or other deferred price or quantity adjustment has been made with respect to any such Receivables. The bad debt reserves and allowances reflected in the Financial Statements are adequate in the judgment of the Company in light of its loss history and the Company’s knowledge regarding its account debtors.

SECTION 5.19 Environmental Matters. Except as set forth in Schedule 5.19:

(a) the properties, facilities and assets owned and leased by the Company, and the operations conducted thereon by the Company and the use, maintenance, or operation of such properties, facilities and assets:

(i) have been and are in compliance in all material respects with any applicable federal, state, local or foreign laws, regulations and ordinances concerning health and safety, pollution or protection of the environment, including by way of illustration and not by way of limitation, the Clean Air Act, 42 U.S.C. ss. 7401 et seq., the Federal Water Pollution Control Act of 1972, 33 U.S.C. ss. 1251 et seq., (the "Clean Water Act"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. ss. 6901 et seq. ("RCRA"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. ss. 9601 et seq., ("CERCLA"); the Toxic Substances Control Act, 15 U.S.C. ss. 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. ss. 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. ss. 11001 et seq.; the Pollution Prevention Act of 1990, 42 U.S.C. ss. 1301 et seq.; the Federal Hazardous Materials Transportation Law, 49 U.S.C. ss. 5101 et seq.; and the Safe Drinking Water Act, 42 U.S.C. ss.ss. 300(f) through 300(j); the Occupational Safety and Health Act of 1970, 29 U.S.C. ss. 651 et seq. (including any amendments or extensions thereof, and rules, regulations, standards or guidelines pursuant to any of the foregoing) (each hereinafter an "Environmental Law");

(ii) are not subject to any existing, pending or threatened investigation, inquiry or proceeding by any Governmental Authority for any material liability (absolute, contingent or otherwise) or obligations under any Environmental Law; and

(iii) do not contain asbestos that is friable or must otherwise be encapsulated or removed pursuant to Environmental Law;

(b) no Hazardous Substances have been disposed of or otherwise Released by the Company except in compliance in all material respects with Environmental Laws and in a manner which has not and is not reasonably likely to give rise to any material liability (absolute, contingent or otherwise) under Environmental Law; and

(c) the Company has furnished or provided the Purchaser with access to all environmental audits, reports and other material environmental documents relating to the current or former operations, properties or facilities of the Company that are in its possession, custody or control and that were prepared since December 31, 2000.

SECTION 5.20 Intellectual Property.

(a) The Company has provided to the Purchaser a true and complete list of all Company IP, together with any and all licenses related to the foregoing.

(b) The Company owns, or is licensed, authorized or otherwise possesses legally enforceable rights to use, the Company IP. To the knowledge of the Company, and except as set forth on Schedule 5.20, no other Person has any rights in, to or under any of the Company IP owned by the Company. Except as set forth on Schedule 5.20, the Company has caused its employees to execute such invention assignment and/or confidentiality agreements, if any, as may be necessary under applicable law to secure to the Company all rights in any inventions developed, in development or to be developed in the future with respect to the Business and to ensure the confidentiality of all proprietary information of the Company.

(c) Except as set forth in Schedule 5.20, all grants, registrations and applications for the Company IP owned by the Company (A) are valid, subsisting, in proper form and to the extent applicable, enforceable, and have been duly assigned and maintained, including the submission of all necessary filings and fees in accordance with the legal and administrative requirements of the appropriate jurisdictions, (B) have not lapsed, expired or been abandoned, and (C) are not the subject of any legal or administrative adversarial proceeding before any Governmental Authority in any jurisdiction.

(d) To the knowledge of the Company, all Company IP owned or licensed by the Company pursuant to an exclusive license agreement and used in the Business are not being infringed by any third party. To the knowledge of the Company, the conduct of the Business as currently conducted does not conflict with or infringe in any way on any intellectual property rights of any third party. Except as set forth on Schedule 5.20, there is no claim, suit, action or proceeding pending or, to the knowledge of the Company, threatened against the Company (A) alleging any such conflict or infringement with any third party's intellectual property rights, or (B) challenging the ownership, use, license, validity or enforceability of the Company IP.

(e) To the knowledge of the Company, the Company is not, nor will it be as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any license, sublicense or other agreement relating to the Company IP.

SECTION 5.21 Tax Matters. Except as set forth in Schedule 5.21:

(a) The Company has timely filed with the appropriate Tax Authority all U.S. federal income Tax Returns and all other applicable Tax Returns, and all such Tax Returns are true, correct and complete in all material respects. All Taxes due and owing by the Company (whether or not reflected on any Tax Return) have been paid. The Company has duly and timely withheld from employee salaries, or wages or other compensation (whether or not paid in cash) and other amounts paid to creditors, independent contractors and other third parties and paid over to the appropriate Governmental Authority all amounts required to be so withheld and paid over for all periods under all applicable Tax or other laws.

(b) No audits are pending with regard to any Taxes or Tax Returns of the Company and there are no outstanding deficiencies or assessments asserted in writing by any Tax Authority. The Company has provided to the Purchaser correct and complete copies of all income Tax Returns of the Company for which the statute of limitations has not expired, and all examination reports and statements of deficiencies assessed against or agreed to by the Company.

(c) There are no outstanding agreements, consents or waivers extending the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against the Company, and the Company is not a party to any agreement providing for the allocation or sharing of Taxes.

(d) The unpaid Taxes of the Company did not, as of the December 31 Balance Sheet, exceed the reserve for tax liability set forth on the face of the December 31 Balance Sheet,

and will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company in filing their Tax Returns.

(e) The Company has not made any payment or payments, is obligated to make any payment or payments, nor is a party to (or participating employer in) any agreement or employee benefit plan that could obligate it or Purchaser to make any payment or payments, either (i) to a U.S. citizen or U.S. resident taxpayer or (ii) for services rendered in the U.S., as a result of the consummation of the transactions contemplated by this Agreement that would constitute an "excess parachute payment," as defined in Section 280G of the Code (or any comparable provisions of state, foreign or local law).

SECTION 5.22 Employment Matters. Except as set forth on Schedule 5.22, the Company is neither currently experiencing nor has experienced any material strikes, collective labor grievances or other collective bargaining disputes in the last five (5) years. To the knowledge of the Company, there is no other organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Company. The Company has complied with all applicable laws relating to employment, employment discrimination and employment practices, including wage and hours regulations, laws relating to equal opportunity, workplace safety, workers' compensation and similar laws, except where the failure(s) to so comply could not reasonably be expected to result in claims, penalties, fees or other liabilities, individually or in the aggregate, in excess of Fifty Thousand Dollars ($50,000).

SECTION 5.23 Employee Benefit Matters.

(a) The Company has delivered to the Purchaser true and complete copies of all employee benefit plans (as defined in Section 3(3) of ERISA) and all bonus, stock option, stock purchase, profit sharing, savings, disability, incentive, deferred compensation, retirement, severance and other employee benefit plans, programs or arrangements (i) sponsored, maintained or contributed to or by the Company to which the Company is a party or (ii) with respect to which the Company has (or could have) any obligation or liability (individually, a "Plan," and collectively, the "Plans"). Except as set forth on Schedule 5.23(a)(i), the Company has no agreement, understanding, commitment or obligation to create, enter into or contribute to any additional employee benefit plan (other than a Plan), or to modify or amend any existing Plan. Except as set forth on Schedule 5.23(a)(ii), there has been no amendment, interpretation or other announcement (written or oral) by the Company or any other Person relating to, or change in participation or coverage under, any Plan that, either alone or together with other such items or events, could materially increase the expense of maintaining such Plan (or the Plans taken as a whole) above the level of expense incurred with respect thereto for the most recent fiscal year included in the Financial Statements.

(b) With respect to each Plan, the Company has made available to the Purchaser true and complete copies of (i) all plan documents, as in effect on the date hereof, (ii) the latest Internal Revenue Service determination letter, if applicable, (iii) the filed Form 5500, if applicable, for the last three (3) fiscal years, (iv) summary plan descriptions, if any, and all modifications thereto communicated to employees, (v) all coverage, nondiscrimination, top heavy and Code Section 415 tests performed with respect to such Plan for the last three (3) years, if applicable, and (vi) the most recent actuarial report, if any, prepared for such Plan.

(c) All Plans are (and at all times for which any applicable statute of limitations has not barred claims associated with such Plans) established, maintained, administered, operated and funded in compliance in all material respects with their terms and all requirements prescribed by applicable laws, statutes, orders, rules and regulations, including without limitation, ERISA, the Code and the Health Insurance Portability and Accountability Act of 1996, as amended. The Company (and, to the knowledge of the Company, all other Persons, including without limitation, all fiduciaries) have properly performed all material obligations required to be performed by them under (or with respect to), and are not in any material respect in default under or in violation of, any of the Plans or any of the legal requirements applicable thereto, including without limitation any reporting, disclosure or notification obligations.

(d) The Company has not, and to the knowledge of the Company, no other Person has, with respect to any Plan subject to ERISA, engaged in or been a party to any "prohibited transaction", as such term is defined in Section 4975 of the Code or Section 406 of ERISA, which could result in the imposition of either a penalty assessed pursuant to Section 502(i) of ERISA or a Tax imposed by Section 4975 of the Code.

(e) There are no pending or, to the knowledge of the Company, threatened claims, lawsuits or arbitrations (other than routine claims for benefits), relating to any of the Plans, which have been asserted or instituted against the Company, any Plan or the assets of any trust for any Plan nor, to the knowledge of the Company, is there a basis for any such claim, lawsuit or arbitration. No Plan is currently under investigation, audit or review, directly or indirectly, by any Governmental Authority, and, to the knowledge of the Company, no such action is contemplated or under consideration by any Governmental Authority. No Plan that is subject to ERISA is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or, except as disclosed in Schedule 5.23(e), is subject to Section 412 of the Code or Section 302 or Title IV of ERISA.

SECTION 5.24 Insurance. The Company has delivered to the Purchaser true and complete copies of all policies of fire, liability, workmen's compensation and other similar forms of insurance of the Company, which policies are in full force and effect, and no notice of cancellation or termination has been received with respect to any such policy. Except as set forth on Schedule 5.24, the Company maintains (a) insurance on all of their property (including leased premises) that insures against loss or damage by fire or other casualty and (b) insurance against liabilities, claims and risks of a nature and in such amounts which the Company reasonably believe are prudent. Such policies or binders are sufficient for compliance with all requirements of law currently applicable to the Company and of all agreements to which the Company is a party, will remain in full force and effect until the respective expiration dates of such policies or binders, without the payment of additional premiums, other than premiums scheduled to be paid in accordance with the terms of such policies, and will not in any way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement. Except as set forth on Schedule 5.24, no dispute with respect to coverage under any insurance policy exists with respect to any insurance carrier.

SECTION 5.25 Compliance with Laws. Other than (i) matters governed by Environmental Law, (ii) Tax matters, (iii) Real Property matters and (iv) with respect to any Plans (which clauses (i) - (iv) are addressed elsewhere in this Agreement), the Company has

complied and remains in compliance with all applicable laws, regulations and zoning ordinances of any Governmental Authority, including export control laws and regulations, except for those instances of non-compliance that could not reasonably be expected, individually or in the aggregate, to result in liability in excess of Fifty Thousand Dollars ($50,000), and the Company has no knowledge of and has not received any notice alleging any such violation of any such laws, regulations or zoning ordinances.

SECTION 5.26 Real Estate.

(a) The Company does not own or otherwise have title to any Real Property.

(b) The Company has delivered, or caused to be delivered, to the Purchaser true and complete copies of each of the Leases. With respect to each Lease, and except as set forth in Schedule 5.26(b), (i) each Lease is legal, valid, binding, and enforceable, and in full force and effect assuming due authorization, execution and delivery by the counterparties to such Lease; (ii) the Company is not in violation or in default of, in any material respect, or has failed to perform any material obligation under, any Lease, and nothing has occurred that with lapse of time or the giving of notice or both would constitute such a breach or default of any Lease by the Company; (iii) to the knowledge of the Company no other party to such Leases is in violation or in default of, in any material respect, or has failed to perform any material obligation under, any Lease and nothing has occurred that with the lapse of time or the giving of notice or both would constitute such a breach or default of any Lease by such other party; and (iv) the Company has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in any Lease.

(c) The Real Property includes all real property used in the Business. All such offices, manufacturing and production facilities and other structures are adequate for the uses to which they are being put and there are no applicable adverse zoning, building or land use codes or rules, ordinances, regulations or other restrictions relating to zoning or end use that currently, or to the knowledge of the Company, may prospectively prevent, or cause the imposition of material fines or penalties as the result of, the use of all or any portion of the Real Property for the conduct of the Business as presently conducted. The Company has received all necessary approvals with regard to occupancy and maintenance of the Real Property, except for such approvals which, if not received, could not reasonably be expected to have a Material Adverse Effect on the Company.

SECTION 5.27 Warranty and Product Liability Matters. Subject only to the reserve for product warranty claims set forth on the December 31 Balance Sheet or on the books of the Company in accordance with the past practices of the Company, except as set forth on Schedule 5.27, (i) the products manufactured, sold and delivered by the Company have conformed in all material respects with all applicable contractual commitments and all express warranties, and (ii) the Company has no significant liability for replacement or repair thereof or other damages in connection therewith.

SECTION 5.28 Corporate Books and Records. Except as set forth on Schedule 5.28, the Company has furnished to the Purchaser copies of (a) the minute books of the Company and (b) the stock transfer books of the Company.

SECTION 5.29 Government Contracts. The Company has not been suspended or debarred from bidding on contracts or subcontracts for any agency of the United States Government or any foreign government, nor to the knowledge of the Company has such suspension or debarment been threatened or action for suspension or debarment been commenced. The Company is not currently being audited, except in the ordinary course of business or as is customary in the industry or as provided by the Federal Acquisition Regulations or, to the knowledge of the Company, investigated by the United States Government Accounting Office, the United States Department of Justice, the United States Department of Defense or any of its agencies, the Defense Contract Audit Agency or the Inspector General or other authorities of any agency of the United States Government, or any foreign government, nor to the knowledge of the Company, has such audit or investigation been threatened. To the knowledge of the Company, (i) there is no valid basis for the Company's suspension or debarment from bidding on contracts or subcontracts for any agency of the United States Government or any foreign government and (ii) there is no valid basis for a claim pursuant to an audit or investigation by the United States Government Accounting Office, the United States Department of Justice, the United States Department of Defense or any of its agencies, Defense Contract Audit Agency or other authorities of any agency of the United States Government or any foreign government, or any prime contractor with any such governmental body. The Company has had no contract or subcontract terminated for default by the Company and has not been determined to be nonresponsible by any agency of the United States Government or any foreign government. The Company does not have any outstanding agreements, contracts or commitments that require it to obtain or maintain a government security clearance.

SECTION 5.30 Bank Accounts. The Company has provided to the Purchaser the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts of any nature and the names of all Persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

SECTION 5.31 Previous Conduct of the Business. Except as set forth on Schedule 5.31, to the knowledge of the Company, no officer or employee of the Company (a) has any direct or indirect ownership interest in any property, real or personal, tangible or intangible, used in or directly pertaining to the Business, including without limitation, any Intellectual Property, (b) is a supplier, customer or creditor (other than as an officer or employee of the Company) of the Company or (c) provides any services, produces and/or sells any products or product lines, or engages in any activity that is competitive with the Business.

SECTION 5.32 Medical Device Administration Matters. The Company has not received any written communication from a Governmental Authority that alleges that the Company is not in compliance with any laws, ordinances, rules or orders promulgated by the U.S. Food and Drug Administration (the "FDA"). There is no action or proceeding by the FDA or any other Governmental Authority, including but not limited to recall procedures, pending or, to the knowledge of the Company, threatened against the Company relating to the safety or efficacy of any of the products related to the Company's medical device business. The Company is not subject to debarment and the Company does not employ in any capacity related to the medical device business any person who has been debarred pursuant to Section 3.06 of the

Federal Food, Drug and Cosmetic Act, 21 U.S.C. ss. 335A, or who is the subject of a conviction described in such Section.

**ARTICLE 6.**

**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

The Purchaser hereby represents and warrants that:

SECTION 6.01 Organization. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

SECTION 6.02 Authority and Enforceability. The Purchaser has all necessary corporate power and authority to execute and deliver the Transaction Documents, to perform its obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery of the Transaction Documents by the Purchaser, the performance of its obligations thereunder, and the consummation by the Purchaser of the transactions contemplated thereby have been duly authorized by all requisite corporate action on the part of the Purchaser. The Transaction Documents have been duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the Company and the Stockholder Representative and approval by the Stockholders) constitute the legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

SECTION 6.03 No Conflict. The execution, delivery and performance of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby do not and will not (i) conflict with or violate any provisions of its certificates of incorporation, by-laws or equivalent documents, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to any other Person any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Purchaser is a party, or by which any property or asset of the Purchaser is bound, or (iii) result in a material violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which the Purchaser is subject, or by which any property or asset of the Purchaser is bound.

SECTION 6.04 Consents and Approvals. Except as set forth on Schedule 6.04, the execution, delivery and performance of this Agreement by the Purchaser does not require any consent, authorization, filing with, approval, notification or registration to or with any Person by the Purchaser.

SECTION 6.05 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions

contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

SECTION 6.06 Solvency. The Purchaser is and will be, after giving effect to the transactions contemplated hereby, solvent. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with actual intent to hinder, delay or defraud either present or future creditors of the Purchaser.

SECTION 6.07 Litigation. The Purchaser is not engaged in, or a party to, or to its knowledge, is threatened with, any suit, action or legal, administrative, arbitration or other proceeding or governmental investigation before any Governmental Authority, which, if adversely determined, would adversely affect or impede, the consummation of the transactions contemplated hereby.

## ARTICLE 7.

## OBLIGATIONS BEFORE CLOSING

SECTION 7.01 Company's Covenants. The Company agrees that from the date of this Agreement until the Closing, unless the Purchaser agrees otherwise in writing:

(a) Closing. The Company will cooperate with the Purchaser and use its commercially reasonable efforts to cause the conditions precedent to the obligations of the Purchaser to close as set forth in Article 9 to be satisfied.

(b) Access to Information. Upon reasonable notice to the Company, and during normal business hours, the Company shall provide to Purchaser and its employees, officers, directors, affiliates, attorneys, accountants, financial advisers, consultants, representatives and agents (collectively, the "Agents"), reasonable access to (i) the Company's premises and (ii) all data (financial or otherwise) regarding the Company, and shall furnish to the Purchaser copies of such materials relating to the business, affairs, operations, prospects, properties, assets or liabilities of the Company as the Purchaser shall reasonably request. Upon reasonable notice to and with the prior consent of the Company (which consent shall not be unreasonably withheld), the Purchaser and its Agents shall be entitled to contact and communicate with the Company's employees, officers, representatives, scientific advisors, customers, contractors, creditors and others having business relationships with Company. The Company shall fully cooperate, in all reasonable respects, with the Purchaser in such endeavors and other due diligence activities. Purchaser shall endeavor to conduct its due diligence activities in a manner that causes no more disruption to the Company's business than is reasonably necessary under the circumstances.

(c) Business Relationships. The Company shall use commercially reasonable efforts to (i) preserve its business organization and properties intact, including its present business operations and physical facilities, (ii) to the extent desired by the Purchaser, maintain until Closing and encourage the continued relationship after Closing of its present officers, employees and consultants and (iii) preserve its present relationships with suppliers, customers, and others having business relationships with it.

(d) Corporate Matters. The Company shall keep in full force and effect its corporate existence. The Company will not (i) amend its certificate of incorporation or by-laws, (ii) issue any shares of capital stock, other than pursuant to options or other securities or agreements that are outstanding on the date hereof, (iii) issue or create any warrants, obligations, subscriptions, options, convertible securities, or other commitments under which any additional shares of its capital stock of any class or other securities might be directly or indirectly authorized, issued, or transferred from treasury, (iv) reclassify, combine, split, subdivide, redeem, purchase or otherwise acquire, directly or indirectly any of its Company Common Stock (excluding the Options), (v) except as expressly provided for in this Agreement, declare or pay any dividends or (v) agree to do any of the acts listed above.

(e) Compensation Increases. Except as specifically authorized or contemplated by this Agreement or the Schedules, the Company will not do or agree to do any of the following acts: (i) grant any increase in salaries payable or to become payable by it to any officer, employee, sales agent or representative, other than increases given in the ordinary course of business and consistent with past practices, (ii) increase benefits (including bonus, sick pay, vacation, severance or termination pay) to any officer, employee, sales agent or representative under any Plan or other contract or commitment, other than increases given in the ordinary course of business, or (iii) enter into or modify any employment agreement or collective bargaining agreement, other than in the ordinary course of business.

(f) New Business. The Company will not do or agree to do any of the following acts:

(i) other than in the ordinary course of business, enter into any contract, commitment or transaction that requires the payment (a) by the Company of an aggregate amount exceeding Fifty Thousand Dollars ($50,000) or (b) to the Company of an aggregate amount exceeding One Hundred and Fifty Thousand Dollars ($150,000);

(ii) make any capital expenditures in excess of Fifty Thousand Dollars ($50,000) for any single item or enter into any lease of capital equipment or property under which the annual lease charge is in excess of Fifty Thousand Dollars ($50,000);

(iii) make or change any election concerning Taxes or Tax Returns, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any Tax claim or assessment or surrender any right to claim a refund of Taxes or obtain or enter into any Tax ruling, agreement, contract, understanding, arrangement or plan;

(iv) sell, pledge (or otherwise subject to any Lien) or dispose of any asset with a net book value in excess of Fifty Thousand Dollars ($50,000), other than in the ordinary course of business;

(v) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) or form any corporation, partnership, joint venture, other business organization or division thereof, or acquire directly or indirectly any material amount of assets, other than in the ordinary course of business and consistent with past practice;

(vi) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person, or make any loans or advances, except in the ordinary course of business and consistent with past practice; or

(vii) enter into or amend any contract, agreement, commitment or arrangement with respect to any matter set forth in this subsection (f).

(g) Liability and Waiver. The Company will not do or agree to do any of the following acts, other than in the ordinary course of business: (i) waive or compromise any material right or claim of the Company or (ii) cancel, without full payment, any note, loan, indebtedness or other obligation owing to the Company.

(h) Negotiations. Other than as set forth herein or as contemplated hereby, the Company and its Agents shall not directly or indirectly, solicit, initiate, request or encourage any inquiries or proposals from, or provide any non-public information to, any Person (other than the Purchaser or its Agents) concerning any merger, consolidation, business combination, sale of substantial assets, purchase or sale of the shares of capital stock of the Company or similar transaction involving the Company. In the event that the Company receives an unsolicited offer or indication of interest to acquire a portion of the stock or assets of the Company from any Person, the Company will provide the Purchaser notice of such unsolicited offer, which notice shall include all material details of such offer.

(i) Agreements. The Company will not make any material modification or amendment to, or cancel or terminate any Material Contracts, or agree to do any of those acts.

(j) Business. The Company will, to the extent within its control, conduct the Company's business and operations in the ordinary course of business consistent with past practices, including with respect to compliance with laws, and including, without limitation, maintaining working capital balances, collecting accounts receivable, paying accounts payable, making repair and maintenance capital expenditures and managing cash accounts generally.

(k) Material Adverse Effect. The Company shall promptly notify the Purchaser of any Material Adverse Effect on the Company, or any material breach or default by any third party, or any material breach or default or alleged breach or default by the Company, under any Material Contracts, and shall consult with the Purchaser as to the actions to be taken in response thereto.

(l) Accounting. The Company will maintain the books, accounts and records of the Company in accordance with past custom and practice as used in the preparation of the Financial Statements.

(m) Insurance. The Company will use commercially reasonable efforts to continue to maintain and carry its existing insurance. The Company will retain and not distribute to the Stockholders any amounts received by the Company with respect to any insurance policy if and to the extent that the associated matter has not been completely resolved prior to Closing.

(n) Intellectual Property. The Company will use commercially reasonable efforts to keep in full force and effect all material rights, franchises and Intellectual Property relating or pertaining to the Business as currently conducted.

(o) Assets. The Company will use commercially reasonable efforts to maintain the assets of the Company in good repair, order and condition (subject to normal wear and tear), consistent with current needs and prior practice.

(p) Supplemental Disclosure. From time to time prior to the Closing Date, the Company shall disclose in writing on a supplemental schedule delivered to the Purchaser, any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement, which disclosure is necessary to correct or supplement any information contained in a Schedule, such that without such disclosure a representation or warranty of the Company would have been breached. Any such supplemental schedule shall, except for the purposes of determining compliance with Section 9.01, be deemed to modify, amend or supplement such Schedule for all purposes of this Agreement, including, without limitation, Article 10.

(q) Covenants. The Company shall notify the Purchaser promptly after obtaining knowledge of its failure to comply in any material respect with any covenant applicable to the Company contained herein.

(r) Stock Option Plan. The Stock Option Plan will be terminated by the Company on or prior to the Closing Date. The Company will cause each Option on or prior to the Closing Date to be cancelled, terminated or exercised. No later than fourteen (14) days prior to the Closing Date, the Company shall advise the Purchaser regarding the termination of the Stock Option Plan and the number, structure and timing of the cancellation, termination or exercise of all Options.

(s) Scissors Distributor. Notwithstanding anything in this Section 7.01 to the contrary, the Company may, at any time prior to the Closing, negotiate and enter into an agreement with a third party (including ConMed Corporation) for the distribution and/or development of the Scissors, provided that the Purchaser consents to such agreement prior to its execution.

(t) Stockholder Communications. In all communications with the Stockholders related to the Merger, the Company will provide fair, accurate and complete disclosure in all material respects such that the Stockholders will receive adequate information in order to make an informed decision with respect to approving the transactions contemplated by this Agreement.

(u) Company Financial Statements for Purchaser IPO. In connection with and in preparation for the Purchaser IPO, the Company will prepare financial statements of the Company at least quarterly, and assist D&T (as hereinafter defined) in its review (and, if necessary for the Purchaser IPO, audit) of such financial statements.

(v) 401(k) Plan. All 401(k) Plans for the benefit of the Company's employees will be terminated by the Company on or prior to the Closing Date.

(w) Scissors Transaction On or Prior to Closing. Notwithstanding the foregoing in this Section 7.01, the Purchaser shall not unreasonably withhold its consent to the signing of a definitive, binding agreement with respect to a Scissors Transaction with ConMed Corporation on or prior to the Closing Date.

SECTION 7.02 Purchaser Covenants. The Purchaser agrees that from the date of this Agreement until the Closing:

(a) Closing. The Purchaser will cooperate with the Company and use its commercially reasonable efforts to cause the conditions precedent to the Company's obligation to close as set forth in Article 8 to be satisfied.

(b) Notice. The Purchaser shall notify the Company promptly after obtaining knowledge of its failure or any failure by the Purchaser to comply in any material respect with, or any breach of, any representation, warranty, covenant, agreement or obligation applicable to either of them contained herein.

(c) Supplemental Disclosure. The Purchaser shall give prompt written notice to the Company upon the Purchaser obtaining knowledge of any event, condition, fact or circumstance the existence of which causes a representation or warranty of the Purchaser to be untrue or inaccurate.

SECTION 7.03 Filing Fees; Audit of Financial Statements. The Purchaser shall pay all filing fees and other expenses (other than the Company's legal, accounting and other professional fees) incurred by the Purchaser and/or the Company in connection with the Filings (including the Purchaser IPO), and the Purchaser shall also pay the fees and expenses of Deloitte & Touche LLP ("D&T") as follows: (i) all fees and expenses of D&T incurred in connection with its audit of the balance sheet of the Company for the fiscal year ended as of December 31, 2003, and the related statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such year, (ii) the incremental fees and expenses of D&T incurred for the difference between its review and its audit of the balance sheet of the Company for the fiscal year ended as of December 31, 2004, and the related statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such year, and (iii) the fees and expenses of D&T incurred in its preparation of any interim financial statements of the Company for any period in 2005 that are not typically prepared by the Company in the ordinary course of its operations.

SECTION 7.04 Affirmative Covenants of the Company and the Purchaser. The Company and the Purchaser agree that:

(a) Each of the Company and the Purchaser will use commercially reasonable efforts to prepare and file any Filings, if any, required by the consummation of the Merger and the transactions contemplated hereby, at such times as such Filings are required to be made.

(b) The Company and the Purchaser each shall promptly supply the other with any information which may be required in order to effect any Filings pursuant to this Section 7.04. Each of the Company and the Purchaser will notify the other promptly upon the receipt of any comments from any government officials in connection with any filing made pursuant hereto

and of any request by any government officials for amendments or supplements to any Filings or for additional information and will supply the other with copies of all correspondence between such party or any of its representatives, on the one hand, and any government officials, on the other hand, with respect to the Merger or any Filings. Each of the Company and the Purchaser shall respond as promptly as possible to any inquiries or requests received from any Governmental Authority relating to the Merger or any Filings. Each of the Company and the Purchaser will cause all documents that it is responsible for filing with any Governmental Authority under this Section 7.04 to comply in all material respects with all applicable requirements of law and the rules and regulations promulgated thereunder.

(c) Whenever any event occurs that is required to be set forth in an amendment or supplement to any Filings, the Company or the Purchaser, as the case may be, will promptly inform the other of such occurrence and cooperate in filing with the Governmental Authority, as applicable.

SECTION 7.05 Confidential Information. As used herein, "Confidential Information" means all information generated by, for or on behalf of any party hereto (the "Disclosing Party") or any of its subsidiaries or Affiliates and furnished either orally, electronically or in writing to another party (the "Receiving Party") or its Agents or which the Receiving Party learns during the course of discussions with the Disclosing Party. Confidential Information does not include information that (a) was available to the public prior to the time of disclosure or known by the Receiving Party prior to the date hereof and not subject to any obligation of confidentiality with respect thereto, (b) becomes available to the public through no act or omission of the Receiving Party or (c) becomes available to the Receiving Party from a third party not under any obligation of confidentiality with respect thereto. The parties hereto agree that the Receiving Party shall hold the Confidential Information in confidence, shall use it only to assist it or its designees in consummating the transactions contemplated hereby and shall not use it for any other purpose whatsoever and shall not disclose any of it except (a) to its Agents who need such information for the purpose of consummating the transactions contemplated hereby (and such persons shall (i) be informed by the Receiving Party of the confidential nature of such information and (ii) agree to be subject to all of the terms of this Section 7.05, and the Receiving Party shall be responsible for any breach of such terms by any of its Agents), or (b) as may be required by law in the judgment of the Receiving Party. In the event of disclosure under clause (b), the Receiving Party will provide the Disclosing Party with prior notice so that the Disclosing Party may seek a protective order or other appropriate remedy, and the Receiving Party shall exercise reasonable efforts to assist the Disclosing Party in obtaining such order or remedy (at the Disclosing Party's cost).

SECTION 7.06 Public Announcement. From the date hereof through the Closing Date, neither the parties hereto nor their respective Agents shall issue or cause the publication of any press release or public announcement of any kind with respect to the Merger, this Agreement or the other Transaction Documents, or the other transactions contemplated hereby or thereby, without the prior written consent of the other parties hereto (which consent shall not be unreasonably withheld), except as may be required by law after reasonable efforts have been made to consult with the other parties hereto prior to such issuance or publication.

SECTION 7.07 Retention Plan. The Purchaser and the Company will work together to develop jointly a retention plan for key Company employees and an integration plan upon the consummation of the Merger.

## ARTICLE 8.

## CONDITIONS PRECEDENT TO COMPANY'S PERFORMANCE

The obligation of the Company to consummate the transactions described herein that are to be consummated on the Closing Date and to perform the other covenants and agreements in accordance with the terms and conditions of this Agreement and the other Transaction Documents is subject to the satisfaction, at or before Closing, of each of the conditions set forth in this Article 8 (any of which may be waived by the Company in whole or in part, in its sole and absolute discretion):

SECTION 8.01 Representations and Warranties of the Purchaser. All representations and warranties made by or with respect to the Purchaser contained in this Agreement or in any of the other Transaction Documents shall be true and complete in all material respects when made and on and as of the Closing Date as though made as of such date, or if the representation speaks as of an earlier date, true and complete in all material respects as of the date indicated.

SECTION 8.02 Performance of the Purchaser. The Purchaser shall have performed, satisfied and complied with all of its covenants and agreements, and satisfied all of its obligations and conditions required by this Agreement to be performed, complied with, or satisfied by it on or before the Closing, in each case, in all material respects.

SECTION 8.03 Absence of Litigation. No action, suit or proceeding before any Governmental Authority seeking to restrain or prohibit the transactions contemplated by this Agreement shall have been instituted after the date of this Agreement and not dismissed.

SECTION 8.04 Purchaser Certificate. The Company shall have received a certificate from the Purchaser substantially in the form attached hereto as Exhibit 8.04, dated as of the Closing Date, signed by a duly authorized officer of the Purchaser certifying that, to the best of his or her knowledge, the conditions specified in Section 8.01, Section 8.02 and Section 8.03 have been fulfilled.

SECTION 8.05 Certificate of Merger. The Certificate of Merger shall have been executed and delivered by the Company.

SECTION 8.06 Escrow Agreement. The Purchaser and the Escrow Agent shall have duly executed and delivered the Escrow Agreement to the Company and the Stockholder Representative.

SECTION 8.07 Legal Opinion. The Company shall have received an opinion, dated as of the Closing Date, of Epstein Becker & Green, P.C., counsel to the Purchaser, substantially in the form attached hereto as Exhibit 8.07.

SECTION 8.08 Corporate Approval by the Purchaser. The execution and delivery of this Agreement and the other Transaction Documents by the Purchaser, and the performance of its covenants and obligations hereunder and thereunder and the consummation of the Merger, shall have been duly authorized by all necessary corporate action on the part of the Purchaser.

SECTION 8.09 Closing of Purchaser IPO. The Purchaser IPO shall have closed.

## ARTICLE 9.

## CONDITIONS PRECEDENT TO PURCHASER'S PERFORMANCE

The obligation of the Purchaser to consummate the transactions described herein that are to be consummated on the Closing Date and to perform their other covenants and agreements in accordance with the terms and conditions of this Agreement and the other Transaction Documents is subject to the satisfaction, at or before Closing, of each of the conditions set forth in this Article 9 (any of which may be waived by the Purchaser in whole or in part, in its sole and absolute discretion):

SECTION 9.01 Representations and Warranties. All representations and warranties made by or with respect to the Company to the Purchaser in this Agreement or in any of the other Transaction Documents shall be true and complete in all material respects when made and on and as of the Closing Date as though made as of such date, or if the representation speaks as of an earlier date, true and complete in all material respects as of the date indicated.

SECTION 9.02 Performance of the Company. The Company shall have performed, satisfied and complied with all of its covenants and agreements and satisfied all of its obligations and conditions required by this Agreement to be performed, complied with or satisfied by it on or before the Closing, in each case, in all material respects.

SECTION 9.03 Absence of Material Adverse Effect. Since the date of this Agreement, no change has occurred to the assets, liabilities, business, prospects, financial condition or results of operations of the Company that would have a Material Adverse Effect on the Company.

SECTION 9.04 Absence of Litigation. No action, suit or proceeding before any Governmental Authority seeking to restrain or prohibit the transactions contemplated by this Agreement shall have been instituted after the date of this Agreement and not dismissed.

SECTION 9.05 Certificate of the Company. The Purchaser shall have received a certificate substantially in the form attached hereto as Exhibit 9.05, dated as of the Closing Date, signed by a duly authorized officer of the Company certifying that, to the best of his or her knowledge, the conditions specified in Section 9.01, Section 9.02, Section 9.03 and Section 9.04 have been fulfilled.

SECTION 9.06 Closing Date Balance Sheet. The Company shall have delivered to the Purchaser the Company's balance sheet as of a date no earlier than three (3)

business days prior to the Closing Date (the "Closing Date Balance Sheet") prepared in accordance with GAAP applied consistently with the Company's past practices, which balance sheet shall be certified by the Company's Chief Executive Officer and Chief Financial Officer to present fairly the financial condition and results of operations of the Company as of such date in accordance with GAAP (applied consistently with the Company's past practices).

SECTION 9.07 Closing of Purchaser IPO. The Purchaser IPO shall have closed.

SECTION 9.08 Good Standing Certificate. The Purchaser shall have received a long form certificate of good standing of the Company in Delaware, dated as of a recent date prior to the Closing Date.

SECTION 9.09 Consents and Approvals. The Company shall have obtained and delivered to the Purchaser the consents and approvals required in connection with the transactions contemplated hereby as set forth on Schedule 5.05.

SECTION 9.10 Certificate of Merger. The Certificate of Merger shall have been executed and delivered by the Company.

SECTION 9.11 Escrow Agreement. The Company, the Stockholder Representative and the Escrow Agent shall have duly executed and delivered the Escrow Agreement to the Purchaser.

SECTION 9.12 Legal Opinion. The Purchaser shall have received an opinion, dated as of the Closing Date, of Greenebaum Doll & McDonald PLLC, counsel to the Company, substantially in the form attached hereto as Exhibit 9.12.

SECTION 9.13 Corporate Approval. The execution and delivery of this Agreement and the other Transaction Documents by the Company, the performance of its covenants and obligations hereunder and thereunder and the consummation of the Merger shall have been duly authorized by all necessary Board action on the part of the Company and by a Supermajority of the Stockholders, a copy of all resolutions pertaining to such authorization shall be delivered to Purchaser, and the Purchaser shall have received a certificate signed by a duly authorized officer of the Company in the form attached hereto as Exhibit 9.13 certifying that such copy is true, accurate and complete. Such certificate shall also be accompanied by a certified copy of the Company's Certificate of Incorporation and Bylaws as in effect as of the Closing Date.

SECTION 9.14 Stock Option Plan. The Purchaser shall have received evidence reasonably satisfactory to it that the Stock Option Plan will be terminated prior to or on the Closing Date and all Options issued pursuant thereto will be (prior to or on the Closing Date) cancelled, terminated or exercised.

SECTION 9.15 Resignations. The Purchaser shall have received copies of resignations effective as of the Closing Date of all directors and all officers of the Company.

SECTION 9.16 Financial Statements. The Purchaser shall have received (i) an audited balance sheet of the Company for each of the fiscal years ended as of December 31, 2003 and December 31, 2004, and the related audited statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such years, together with all related notes and schedules thereto, accompanied by the reports thereon of Deloitte & Touche LLP and (ii) the Closing Date Balance Sheet and the related statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such period.

SECTION 9.17 Other Documents. The Purchaser shall have received any other certificates or other documents as may be reasonably requested by the Purchaser or its counsel.

## ARTICLE 10.

## SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

SECTION 10.01 Survival of Representations and Covenants. The representations and warranties (as modified by any supplemental disclosure delivered pursuant to Section 7.01(p) or 7.02(c)) in this Agreement and in the other Transaction Documents shall survive the Merger and continue until the date which is eighteen (18) months following the Closing Date (the "Expiration Date"); provided, however, that the representations and warranties set forth in Sections 5.02 and 5.12 shall survive indefinitely, and the representations and warranties set forth in Sections 5.19, 5.21 and 5.23 shall survive until the applicable statutes of limitations for such matters, if any. The covenants, obligations and agreements in this Agreement and in the other Transaction Documents shall survive the Merger in accordance with their respective terms (and to the extent that no expiration is stated for a particular covenant, obligation or agreement, such covenant, obligation or agreement shall be deemed to survive indefinitely). Notwithstanding the preceding sentences, (i) no claim of indemnity pursuant to this Article 10 with respect to any representation, warranty, covenant, obligation or agreement under this Agreement may be asserted after the Expiration Date, (ii) a claim of indemnity shall survive the Expiration Date to the extent a notice of a claim for indemnity has been given on or prior to the Expiration Date in accordance with the provisions of, and satisfying all of the requirements of, Section 10.05; and (iii) the Expiration Date shall not apply to any breach of a representation, warranty, covenant, obligation or agreement based on Fraud of the Purchaser or the Company. Claims for Purchaser Losses and Stockholder Losses based on Fraud may only be made in accordance with the terms of this Article 10 and only until February 14, 2008.

SECTION 10.02 Stockholders' Indemnity. From and after the Closing Date, the Stockholders shall indemnify and hold harmless the Surviving Corporation, the Purchaser and their permitted and respective assigns and Affiliates, and any director, officer, employee or agent of any of them (each a "Purchaser Indemnified Party") from and against, and agree to pay or cause to be paid to such Purchaser Indemnified Party, all Losses ("Purchaser Losses") equal to the sum of:

(a) Representations and Warranties. Any Purchaser Losses that a Purchaser Indemnified Party may incur or suffer, which arise or result from any breach of any of the Company's representations or warranties contained in this Agreement or in the other Transaction Documents;

(b) Covenants and Agreements. Any Purchaser Losses that a Purchaser Indemnified Party may incur or suffer, which arise or result from any breach of any of the Company's covenants, obligations or agreements contained in this Agreement or in the other Transaction Documents;

(c) Professional Fees. All reasonable professional fees (including those of attorneys, accountants, consultants and engineers) and other reasonable expenses incurred by any Purchaser Indemnified Party in connection with subsection (a) or (b) above;

(d) Dissenting Stockholders. The premium, if any, determined by a court order paid by the Surviving Corporation to any Dissenting Stockholder over the amount that would have been paid upon the surrender of such Shares pursuant to Section 3.07; and

(e) Scissors Transaction. Any Purchaser Losses that a Purchaser Indemnified Party may incur or suffer, which arise or result from the signing of a definitive, binding agreement with respect to a Scissors Transaction prior to the Closing Date.

(f) Distributions by Stockholder Representative. Any Purchaser Losses that a Purchaser Indemnified Party may incur or suffer, which arise or result from any distributions of Merger Consideration or Scissors Transaction Consideration by the Stockholder Representative to the Stockholders or any Option holder.

SECTION 10.03 Purchaser and Surviving Corporation Indemnity. From and after the Closing Date, the Purchaser (and after the Effective Time, the Surviving Corporation) hereby agrees to indemnify and hold harmless the Stockholder Representative and the Stockholders and any heir, representative, director, officer, stockholder, employee, Affiliate or agent of any of them (each a "Stockholder Indemnified Party") from and against, and agree to pay or cause to be paid to such Stockholder Indemnified Party, all Losses ("Stockholder Losses") equal to the sum of:

(a) Representations and Warranties. Any Stockholder Losses that a Stockholder Indemnified Party may incur or suffer, which arise or result from any breach of any of the Purchaser's representations or warranties contained in this Agreement or in the other Transaction Documents;

(b) Covenants and Agreements. Any Stockholder Losses that a Stockholder Indemnified Party may incur or suffer, which arise or result from any breach of any of the Purchaser's covenants, obligations or agreements contained in this Agreement or in the other Transaction Documents; and

(c) Professional Fees. All reasonable professional fees (including those of attorneys, accountants, consultants and engineers) and other reasonable expenses incurred by a Stockholder Indemnified Party in connection with subsection (a) or (b) above.

SECTION 10.04 Joint and Several Obligations. All indemnification obligations of the Purchaser and the Surviving Corporation hereunder shall be joint and several. All indemnification obligations of the Stockholders hereunder shall be several (*pro rata* based on the number of Shares outstanding immediately prior to the Closing Date), but not joint.

SECTION 10.05 Procedure for Indemnification. If any party entitled to indemnification pursuant to Section 10.02 or Section 10.03 (herein, the "Indemnitee") receives notice from a third party of any matter that would reasonably be expected to give rise to a claim for indemnification by a party or parties obligated to provide indemnification pursuant to Section 10.02 or Section 10.03 (herein, the "Indemnifying Party"), the procedure set forth below shall be followed:

(a) Notice. The Indemnitee shall give to the Indemnifying Party written notice of any claim, suit, judgment or matter for which indemnity may be sought under Section 10.02 or Section 10.03, promptly but in any event within twenty (20) business days after the Indemnitee receives notice thereof; provided, however, that any delay in the Indemnitee's delivery of notice to the Indemnifying Party shall not prejudice the Indemnitee's right to receive indemnification unless, and then only to the extent that, such delay prejudices the Indemnifying Party's ability to mitigate or otherwise minimize the Losses or to contest such claim.

(b) Defense of a Claim. In all cases the Purchaser shall have the right, at its option and in its sole discretion, to be represented by counsel of its choice, which counsel shall be reasonably acceptable to the Indemnitee, and to assume the defense or otherwise control the handling of any claim, suit, judgment or matter for which indemnity is sought, which is set forth in the notice sent by the Indemnitee, by notifying the Stockholder Representative in writing to such effect within twenty (20) business days of receipt of such notice. If the Purchaser elects to assume and control the defense, the Stockholder Representative shall have the right to employ counsel separate from counsel employed by the Purchaser in any such action and to participate in the defense thereof, but the reasonable fees and expenses of such counsel employed by the Stockholder Representative shall be paid by him or her unless (x) the Purchaser agrees to bear such expense in writing, (y) the Purchaser has failed to assume the defense and employ counsel, or (z) the named parties in any such action include both the Stockholders and the Purchaser and representation of all such parties by the same counsel would be inappropriate due to actual differing interests between them. If the Purchaser does not give timely notice in accordance with the preceding sentence, the Purchaser shall be deemed to have given notice that it does not wish to assume the defense or control the handling of such claim, suit or judgment. In the event that the Purchaser does not assume the defense or otherwise control the handling of such matter, the Stockholder Representative may retain counsel, as an indemnification expense, to defend such claim, suit, judgment or matter.

(c) Final Authority. The parties shall cooperate in the defense of any such claim or litigation and each shall make available all books and records which are relevant in connection with such claim or litigation. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to any matter which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnitee from all liability with respect thereto without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed. If the Indemnitee has assumed the handling of any claim,

suit, judgment or matter for which indemnity is sought, the Indemnitee will not consent to the entry of any judgment or enter into any settlement with respect thereto without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

SECTION 10.06 Claims Between Purchaser or Surviving Corporation and Stockholders. Any claim for indemnification under this Agreement that does not result from the assertion of a claim by a third party shall be asserted by written notice given by the Indemnitee to the Indemnifying Party. The Indemnifying Party shall have a period of twenty (20) business days within which to respond in writing thereto. If the Indemnifying Party does not respond in writing within such twenty (20) business-day period, the Indemnifying Party shall be deemed to have accepted responsibility for such indemnity, and shall have no further right to contest the validity of such claim. If the Indemnifying Party does respond in writing within such twenty (20) business-day period and rejects such claim in whole or in part, the Indemnitee shall be free to pursue such remedies as may be available to it hereunder.

SECTION 10.07 Payment. In the case of the Stockholders as Indemnifying Parties, the Stockholder Representative shall cause any Purchaser Losses due to a Purchaser Indemnified Party pursuant to Section 10.02 to be paid by the Escrow Agent from the Escrow Amount to the extent of funds available thereunder and in accordance with the procedures set forth in this Article 10 and the Escrow Agreement.

SECTION 10.08 Certain Limitations as to Amounts of Recovery.

(a) No Purchaser Indemnified Party or Stockholder Indemnified Party shall be entitled to indemnification in respect of any claim or claims for Purchaser Losses or Stockholder Losses pursuant to Section 10.02(a) or 10.03(a), respectively, unless and until the aggregate amount of all such Purchaser Losses or all such Stockholder Losses, as the case may be, exceeds an aggregate threshold of Fifty Thousand Dollars ($50,000) (the “Minimum Indemnity Threshold”), in which case the Purchaser Indemnified Parties or Stockholder Indemnified Parties, as the case may be, shall be entitled to recover the amount of such claims in excess of the Minimum Indemnity Threshold. Notwithstanding the foregoing, any claim or claims for Purchaser Losses or Stockholder Losses based on the Fraud of the Company, or the Fraud of the Purchaser, as the case may be, will not be subject to the Minimum Indemnity Threshold.

(b) Except in the case of Purchaser Losses resulting from Fraud of the Company, notwithstanding anything to the contrary in this Agreement or the other Transaction Documents, the aggregate liability of the Stockholders and the Stockholder Representative (including any indemnification with respect to Purchaser Losses) for any breach of the obligations, covenants, agreements, representations, and warranties set forth in this Agreement or in any of the other Transaction Documents, or for any other claims or causes of actions arising out of, relating to or in connection with the transactions contemplated hereby or thereby, whether based upon breach of contract, tort or otherwise, shall in no event exceed the Escrow Deposit, and none of the Stockholders or the Stockholder Representative shall have any liability hereunder at any time in excess of the Escrow Amount at such time. In the event of Purchaser Losses resulting from Fraud of the Company, the Purchaser Indemnified Parties shall have the right to recover such Purchaser Losses first against the Escrow Amount at such time (an “Escrow Fraud Payment”), and if and only if the Escrow Amount has been exhausted and is insufficient to

pay such Purchaser Losses, thereafter against any other Persons to which the Purchaser Indemnified Parties are legally entitled to pursue, provided that in no event shall the Stockholders have any liability to Purchaser Indemnified Parties for Purchaser Losses resulting from Fraud of the Company in excess of, with respect to each Stockholder on a *pro rata* basis, fifty percent (50%) of the Merger Consideration actually received by each Stockholder, less such Stockholder's *pro rata* share of the Escrow Fraud Payment made to such Purchaser Indemnified Party.

(c) Except in the case of Stockholder Losses resulting from Fraud of the Purchaser, notwithstanding anything to the contrary in this Agreement or the other Transaction Documents, the aggregate liability of the Purchaser, and after the Effective Time, the Surviving Corporation (including any indemnification with respect to Stockholder Losses) for any breach of the obligations, covenants, agreements, representations, and warranties set forth in this Agreement or in any of the other Transaction Documents, or for any other claims or causes of actions arising out of, relating to or in connection with the transactions contemplated hereby or thereby, whether based upon breach of contract, tort or otherwise, shall in no event exceed fifteen percent (15%) of the Merger Consideration. In the event of Stockholder Losses resulting from Fraud of the Purchaser, the aggregate liability of the Purchaser, and after the Effective Time, the Surviving Corporation, whether based upon breach of contract or otherwise, shall in no event exceed twenty-five percent (25%) of the Merger Consideration.

SECTION 10.09 D&O Indemnification. Notwithstanding anything in this Agreement to the contrary, for a period of six (6) years following the Effective Time, the Purchaser covenants and agrees that, subject to any limitations imposed by applicable law, it will honor (without any Minimum Indemnity Threshold) any exculpatory or indemnification provisions contained in the certificate of incorporation and bylaws of the Company as they exist on the Closing Date for the benefit of any individual who has served as a director or an officer of the Company at any time prior to the Effective Time with respect to acts or omissions by such individuals occurring prior to the Effective Time. The foregoing limitation will not in any way impact Purchaser's ability to adopt exculpatory or indemnification provisions for the Surviving Corporation as they relate to post-Closing service as a director or an officer of the Surviving Corporation that differ from those that exist in the Company's current certificate of incorporation and bylaws, as the same are amended from time to time.

SECTION 10.10 Exclusive Remedy. Except as provided in Section 15.02(a), the indemnification provisions of this Article 10 shall be the sole and exclusive remedy of the parties for any breach of the obligations, covenants, agreements, representations and warranties set forth in this Agreement or in any of the other Transaction Documents, or for any other claims or causes of actions arising out of, relating to or in connection with the transactions contemplated hereby or thereby, whether based upon breach of contract, tort or otherwise, and each party hereby irrevocably waives all statutory, common law and other claims with respect thereto, other than claims for indemnification pursuant to this Article 10.

**ARTICLE 11.**

**MISCELLANEOUS**

SECTION 11.01 Master Agreement Extension. By executing and delivering this Agreement, the Purchaser and the Company agree that the Master Development, Manufacturing and Supply Agreement dated as of March 19, 2003, as amended, between the Purchaser and the Company, shall continue in full force and effect until December 31, 2005 upon the same terms and conditions existing as of the date of this Agreement, unless sooner terminated in accordance with the terms thereof.

SECTION 11.02 Expenses. Each of the parties shall pay all costs and expenses incurred or to be incurred by it in the negotiation and preparation of this Agreement and in the Closing and carrying out the transactions contemplated by this Agreement, except as otherwise expressly provided for hereunder.

SECTION 11.03 Further Documents or Actions. The parties, and after the Effective Time, the Surviving Corporation, will execute, acknowledge and deliver any further deeds, assignments or conveyances, and any other assurances, documents, and instruments of transfer, reasonably requested by a party and will take any other action consistent with the terms of this Agreement that may reasonably be requested by a party for the purpose of carrying out the intent of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby.

SECTION 11.04 Headings. The subject headings of the articles, sections, subsections and clauses of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

SECTION 11.05 Modification and Waiver. This Agreement, the Schedules and Exhibits hereto, and the other Transaction Documents, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties hereto. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

SECTION 11.06 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 11.07 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 11.08 Taxpayer Identification Numbers. The Stockholder Representative shall deliver to Purchaser copies of all Forms W-8 or W-9 or such other tax forms as may be required with respect to persons receiving payments under the terms of this Agreement for withholding and tax reporting purposes. If the Stockholder Representative does not deliver such forms to Purchaser with respect to any such person, the Stockholder Representative shall deduct and withhold such amounts as may be required by applicable law from payments to such persons.

## ARTICLE 12.

## PARTIES

SECTION 12.01 Rights of Parties. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns; provided, however, that (i) the provisions in Article 3 concerning payment of the Merger Consideration are intended for the benefit of the Stockholders, (ii) the provisions in Article 10 concerning the Stockholder Indemnified Parties are intended for the benefit of the Stockholder Indemnified Parties, and (iii) the provisions in Article 10 concerning indemnification for the Purchaser Indemnified Parties are intended for the benefit of the Purchaser Indemnified Parties.

SECTION 12.02 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned (i) by the Purchaser without the prior written consent of the Company or (ii) by the Company or the Stockholders without the prior written consent of the Purchaser.

## ARTICLE 13.

## NOTICES

SECTION 13.01 Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given to the party to whom notice is to be given at the applicable address or facsimile number set forth below on the date of service if served personally on the party; on the third day after mailing by first class mail, registered or certified, postage prepaid; on the date of transmission if sent by confirmed facsimile during the recipient’s normal business hours, or on the first business day after the date of such transmission if not sent during the recipient’s normal business hours; or on the first business day after the scheduled delivery date if mailed via overnight courier. Any party may change its address or facsimile number for purposes of this Section by giving the other parties written notice of the new address or facsimile number in the manner set forth above.

If to the Purchaser or the Surviving Corporation:

AtriCure, Inc.
6033 Schumacher Park Drive
West Chester, OH 45069
Attn: David J. Drachman
Telephone: (513) 755-4100
Fax: (513) 755-4108

with a copy to:

Epstein Becker & Green, P.C.
250 Park Avenue
New York, NY 10177
Attn: Lowell S. Lifschultz
Telephone: (212) 351-4725
Fax: (212) 661-0989

If to the Company or the Stockholder Representative:

Enable Medical Corporation
6345 Centre Park Drive
West Chester, OH 45069
Attn: Raymond W. Ogle
Telephone: (513) 755-7600
Facsimile: (513) 755-5330

with a copy to:

Greenebaum Doll & McDonald PLLC
2800 Chemed Center
255 East Fifth Street
Cincinnati, OH 45202
Attn: Mark H. Longenecker Jr.
Telephone: (513) 455-7618
Facsimile: (513) 762-7918

## ARTICLE 14.

## ARBITRATION AND GOVERNING LAW

SECTION 14.01 Arbitration and Governing Law. Any dispute which arises pursuant to the terms of this Agreement shall be settled exclusively by arbitration conducted as provided herein, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be administered by the American Arbitration Association.

(a) The arbitration shall be conducted in Cincinnati, Ohio, by one (1) arbitrator, jointly selected by the parties hereto, except that if the parties hereto are unable to agree on a single arbitrator within fifteen (15) business days of the submission of a dispute to arbitration, the arbitration shall be conducted by three (3) arbitrators, who shall be selected as follows: one (1) arbitrator selected by the Purchaser and one (1) arbitrator selected by the Company (or, after the Effective Time, the Stockholder Representative), each within ten (10) business days of the expiration of said fifteen (15) business days, and the third jointly selected by the Purchaser and Company (or, after the Effective Time, the Stockholder Representative), or if the parties hereto are unable to agree within ten (10) business days after the selection of the first two arbitrators, jointly by the two (2) arbitrators selected by the parties hereto.

(b) Delaware law shall apply in determining the rights, obligations and liabilities of the parties; provided, however, that the arbitrator(s) shall not have the power to grant any indirect, special, punitive or consequential damages whatsoever, including loss of profits or goodwill.

(c) The arbitrator(s) shall prepare and deliver a written reasoned award. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof and shall be final and binding upon the parties hereto.

(d) All costs and fees relating to the arbitration shall be borne by the losing party hereto, except that if the arbitrator(s) determine that each party hereto has prevailed in part and lost in part, the costs and fees relating to the arbitration shall be allocated between the parties hereto as equitably determined by the arbitrator(s).

SECTION 14.02 Exclusive Means for Dispute Resolution.

(a) The failure or refusal of any party hereto to submit to arbitration or any of the other dispute resolution mechanisms specified herein shall be deemed a breach of this Agreement. If any party hereto seeks and secures judicial intervention requiring enforcement of this Article 14, such party hereto shall be entitled to recover from the other party hereto in such judicial proceeding all costs and expenses, including reasonable attorneys' fees, that it was thereby required to incur.

(b) The procedures specified in this Article 14, shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party hereto, without prejudice to the above procedures, may seek a preliminary injunction or other provisional judicial relief if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the *status quo.* Despite such action, the parties hereto will continue to participate in good faith in the procedures specified in this Article 14.

**ARTICLE 15.**

**COVENANT PAYMENT; TERMINATION**

SECTION 15.01 Consent or Vote of Certain Stockholders. The Company agrees that it shall obtain, by no later than Friday, February 18, 2005, the consents or affirmative votes of Michael D. Hooven, Norman R. Weldon, Karen J. Cassidy and Karen P. Robards (including all spouses of the foregoing and all entities to which the foregoing having voting control or a beneficial interest, to the extent such spouses or entities are Stockholders) as Stockholders of the Company to the approval of the Merger and the Transaction Agreements, and to the appointment of the Stockholder Representative as representative, proxy, agent and attorney-in-fact of the Stockholders as provided in Section 2.07. Upon the Purchaser's receipt of written evidence of all such consents or votes, the Purchaser shall, within one (1) business day thereof, pay the Covenant Payment to the Company.

SECTION 15.02 Termination. This Agreement may be terminated at any time prior to Closing:

(a) by mutual written consent of the Purchaser and the Company;

(b) by written notice delivered by any of the Purchaser, on the one hand, or the Company, on the other hand, if (i) a representation or warranty was not true and correct in all material respects when made by the non-terminating party, and such untrue or incorrect representation or warranty has a Material Adverse Effect on the non-terminating party, (ii) the non-terminating party has failed to perform, satisfy, or comply with all of its respective covenants and agreements in all material respects, or (iii) the non-terminating party has failed to satisfy all of its respective obligations and conditions in all material respects, provided that in the case of (ii) and (iii), such non-terminating party has received thirty (30) days notice of such failure and such failure has not been cured within such thirty (30) day period;

(c) by written notice delivered by any of the Purchaser, on the one hand, or the Company, on the other hand, if the Closing has not occurred on or prior to December 31, 2005; provided, however, that neither the Purchaser nor the Company shall be entitled to terminate this Agreement pursuant to this Section 15.02(c) if its willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby at or prior to such time; or

(d) by written notice delivered by the Purchaser on or before February 23, 2005 if written evidence of all of the consents or affirmative votes described in Section 15.01 have not been received by the Purchaser on or prior to February 18, 2005.

SECTION 15.03 Effect of Termination.

(a) In the event of termination of this Agreement by the Purchaser pursuant to Section 15.02(b) or (d), the Company shall, within ten (10) business days after its receipt of notice from the Purchaser terminating this Agreement, immediately return the Covenant Payment to the Purchaser. In the event of termination of this Agreement by the Company pursuant to any subsection of Section 15.02 or by the Purchaser pursuant to Section 15.02(a) or (c), the Company may retain the Covenant Payment.

(b) Subject to subsection (a) above, in the event of termination of this Agreement by the Purchaser or the Company as provided in Section 15.02, this Agreement will forthwith become void and shall automatically terminate with no further force or effect, and there will be no liability or obligation on the part of any party hereto to any other party hereto or its Agents, except that nothing herein will relieve any party hereto from liability for any breach of this Agreement prior to such termination.

SECTION 15.04 Review of Financial Statements. In the event that in its audit of the Financial Statements, Deloitte & Touche LLP discovers a misstatement in such Financial Statements that has a Material Adverse Effect on the Company, then the Company shall immediately notify the Purchaser, and the Purchaser may terminate this Agreement pursuant to Section 15.02(b)(i).

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of the date set forth above.

ATRICURE, INC.

By: /s/ David J. Drachman

Name: David J. Drachman
Title: President and Chief Executive Officer

ENABLE MEDICAL CORPORATION

By: /s/ Raymond W. Ogle

Name: Raymond W. Ogle
Title: Chief Executive Officer

STOCKHOLDER REPRESENTATIVE

/s/ Raymond W. Ogle

Name: Raymond W. Ogle

[Schedules and Exhibits Omitted]

Delaware
The First State



*I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "ATRICURE, INC." AS RECEIVED AND FILED IN THIS OFFICE.*

*THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:*

*CERTIFICATE OF INCORPORATION, FILED THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2000, AT 9 O' CLOCK A.M.*

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF MAY, A.D. 2001, AT 4:30 O'CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-NINTH DAY OF NOVEMBER, A.D. 2001, AT 11 O'CLOCK A.M.*

*CERTIFICATE OF AMENDMENT, FILED THE SIXTH DAY OF JUNE, A.D. 2002, AT 10 O' CLOCK A.M.*

*AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.*

/s/ Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

*3304415 8100H*

***AUTHENTICATION:*** *3719204*

*050183198*

***DATE:*** *03-03-05*

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 09:00 AM 10/31/2000*
*001548434 – 3304415*

**CERTIFICATE OF INCORPORATION**

**OF**

**ATRICURE, INC.**

FIRST: The name of the corporation (the "Corporation") is AtriCure, Inc.

SECOND: The Corporation's registered office in the State of Delaware is located at 9 East Loockerman Street, Dover, Delaware 19901. The registered agent at this address is National Registered Agents, Inc., in the County of Kent.

THIRD: The purpose or purposes of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is 10,000,000 shares of Common Stock, $.0001 par value per share.

FIFTH: The name and mailing address of the incorporator are as follows:

Gary Day
c/o Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177-1211

SIXTH: The duration of the corporation shall be perpetual.

SEVENTH: The Board of Directors shall have the power to adopt, amend or repeal the By-Laws.

EIGHTH: Meetings of stockholders shall be held at such place, within or without the State of Delaware, as may be designated by or in the manner provided in the By-Laws, or, if not so designated or provided, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide.

NINTH: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, or by any successor thereto, indemnify and hold harmless any and all persons whom it shall have power to indemnify under said Section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said Section. The Corporation shall advance expenses to the fullest extent permitted by said Section. Such right to indemnification and advancement of expenses shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise.

TENTH: To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no person serving as a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the Delaware General Corporation Law; or (iv) for any transaction from which the director derived an improper personal benefit. Neither the amendment or repeal of this Article Tenth nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article shall adversely affect any right or protection existing under this Article at the time of such amendment or repeal.

IN WITNESS WHEREOF, the undersigned, being the incorporator herein before named, has executed this Certificate of Incorporation on this 31st day of October, 2000.

/s/ Gary Day

Gary Day, Esq.
Incorporator

**EXHIBIT 3.1.1**

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 04:30 PM 05/24/2001*
*010250343 – 3304415*

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATRICURE, INC.

AtriCure, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted proposing and declaring advisable that the Certificate of Incorporation of the Corporation be amended and that such amendment be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED: That the Board of Directors of the Corporation recommends and deems it advisable that the Certificate of Incorporation of the Corporation be amended by deleting Article IV thereof and substituting for said Article IV the new Article IV set forth on Exhibit A attached hereto; and

RESOLVED: That the aforesaid proposed amendment be submitted to the stockholders of the Corporation for their consideration; and

RESOLVED: That following the approval by the stockholders of the aforesaid amendment (the "Amendment") as required by law, the officers of the Corporation be, and they hereby are, and each of them hereby is, authorized and directed (i) to prepare, execute and file with the Secretary of State of the State of Delaware a Certificate of Amendment setting forth the Amendment in the form approved by the stockholders and (ii) to take any and all other actions necessary, desirable or convenient to give effect to the Amendment or otherwise to carry out the purposes of the foregoing Resolutions.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the Amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware, and written notice of the adoption of the Amendment has been given as provided in section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the Amendment was duly adopted in accordance with the applicable provisions of sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AtriCure, Inc. has caused this certificate to be signed by its President, this 24th day of May, 2001.

ATRICURE, INC.

By: /s/ Michael D. Hooven

Name: Michael D. Hooven
Title: President

EXHIBIT A

IV.

The total number of shares of all classes of stock which the Corporation has authority to issue is 28,257,000 shares, consisting of (i) 20,000,000 shares of Common Stock, par value $.0001 per share (the "Common Stock"), and (ii) 8,257,000 shares of Preferred Stock, par value $.0001 per share (the "Preferred Stock"), all of which shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock").

The number of authorized shares of Common Stock may be increased or decreased (but not below the sum of the number of shares of Common Stock then outstanding and the number of shares of Common Stock to be reserved pursuant to Section 2(1) below) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if converted basis).

The powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect of each class or series of stock of the Corporation shall be as follows:

Section 1. Liquidation Rights.

(a) Liquidation Payments.

(i) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any other stock of the Corporation, the holders of Series A Preferred Stock shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $0.63 per share of Series A Preferred Stock (the "Original Series A Per Share Purchase Price") (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series A Preferred Stock), plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series A Preferred Stock with respect to such liquidation, dissolution or winding up.

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock of all amounts distributable to them under this Subsection 1(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Subsection 1(a)(i).

No payment shall be made with respect to the Common Stock unless and until full payment has been made to the holders of the Series A Preferred Stock of the amounts that they are entitled to receive under this Subsection 1(a)(i).

(ii) After the payments described in Subsection l(a)(i) shall have been made in full to the holders of the Series A Preferred Stock, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Series A Preferred Stock so as to be available for such payments, the remaining assets available for distribution shall be distributed among the holders of the Common Stock and Series A Preferred Stock ratably in proportion to the number of shares of Common Stock then held by them or issuable to them upon conversion of the Series A Preferred Stock then held by them, until such time as the holders of the Series A Preferred Stock have received aggregate distributions equal to $1.89 per share, and thereafter shall be distributed ratably exclusively to the holders of the Common Stock.

(iii) Upon conversion of shares of Series A Preferred Stock into shares of Common Stock pursuant to Section 2 below, the holders of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(iv) The amounts payable with respect to shares of Series A Preferred Stock under this Subsection 1(a) are sometimes hereinafter referred to as "Series A Liquidation Payments."

(b) Distributions Other than Cash Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation. The Corporation shall give prompt written notice of such valuation to each holder of Preferred Stock. Any securities shall be valued as follows:

(i) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the distribution;

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

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors; and

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be made with an appropriate discount from the market value determined as above to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(c) Merger as Liquidation, etc. The merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) in voting power of the capital stock of the surviving corporation, in which case the provisions of Subsection 2(h) shall apply), the closing of any transaction, or series of transactions, in which more than fifty percent (50%) of the voting power of the Corporation is sold to another corporation or entity or the sale of all, or substantially all, of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1, unless the holders of at least sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock elect to the contrary, such election to be made by giving written notice thereof to the Corporation at least five (5) days before the effective date of such event. If such notice is given with respect to the Series A Preferred Stock, the provisions of Subsection 2(h) shall apply to such Series A Preferred Stock. Unless such election is made by the requisite holders of Series A Preferred Stock, any amounts received by the holders of Series A Preferred Stock as a result of such merger or consolidation shall be deemed to be applied toward, and all consideration received by the Corporation in such asset sale together with all other available assets of the Corporation shall be distributed toward, the Series A Liquidation Payments in the order of preference set forth in Subsection l(a).

(d) Notice. Notice of any proposed liquidation, dissolution or winding up of the affairs of the Corporation (including any merger, consolidation, sale of capital stock or sale of assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection l(c)), stating a payment date, the amount of the Series A Liquidation Payments and the place where said Series A Liquidation Payments shall be payable, shall be given to the holders of record of the Series A Preferred Stock not less than thirty (30) days prior to the payment date stated therein. Any holder of outstanding shares of Series A Preferred Stock may waive notice required by this Subsection by a written document specifically indicating such waiver.

Section 2. Conversion. The holders of Series A Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert; Conversion Price. Each share of Series A Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the principal executive office of the Corporation or any transfer agent for the Series A Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $0.63 by the Series A Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Series A Preferred Stock without the payment of any additional consideration by the holder thereof (the “Series A Conversion Price”) shall initially be $0.63 per share of Common Stock. Such initial Series A Conversion Price shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series A Preferred Stock is convertible, as hereinafter provided. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted.

(b) Automatic Conversion.

(i) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the Series A Conversion Price then in effect, upon the closing of a firm commitment underwritten public offering (a "Qualified Public Offering") pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at an offering price per share (prior to underwriter commissions and discounts) of not less than $2.50 (as adjusted to reflect any stock dividends, distributions, combinations, reclassifications or other like transactions effected by the Corporation in respect of its Common Stock) and with proceeds (after deduction of underwriters' commissions and expenses) to the Corporation of not less than $15,000,000.00 (in the event of which Qualified Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock shall not be deemed to have converted that Series A Preferred Stock until the closing of such Qualified Public Offering). Notwithstanding the foregoing, a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation shall not be deemed to be a Qualified Public Offering causing the automatic conversion of the Series A Preferred Stock into shares of Common Stock.

(ii) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the Series A Conversion Price then in effect, upon the written election of the holders of not less than sixty percent (60%) of the then issued and outstanding shares of the Series A Preferred Stock.

(c) Mechanics of Automatic Conversions. Upon the occurrence of either of the events specified in Subsection 2(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that all holders of shares of Series A Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Subsection 2(b) triggering such conversion, including the date such event occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. On the Automatic Conversion Date, all rights with respect to the Series A Preferred Stock so converted, shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Series A Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of any Series A Preferred Stock, the holders of such Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation,

certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, promptly at such office and in the holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Series A Preferred Stock converted to and including the time of conversion. No fractional share of Common Stock shall be issued upon automatic conversion of any Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock on the Automatic Conversion Date, as determined in good faith by the Corporation's Board of Directors.

(d) Mechanics of Optional Conversions. Before any holder of Series A Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Series A Preferred Stock so converted, shall terminate, except any of the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted and cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Series A Preferred Stock being converted to and including the time of conversion. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. No fractional share of Common Stock shall be issued upon optional conversion of any Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair market value of one share of Common Stock, as determined in good faith by the Corporation's Board of Directors. The Corporation shall, as soon as practicable (but in no event later than five (5) business days) after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Series A Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(i) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act of 1933, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) If the conversion is in connection with a liquidation described in Section 1(c) above, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the consummation of the liquidation, in which event the person(s) entitled to receive the Common Stock upon conversion of Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the consummation of the liquidation.

(e) Adjustments to Series A Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection 2(e), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the first date on which a share of Series A Preferred Stock was issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 2(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) all shares of Common Stock issuable upon conversion of, or as a dividend upon, shares of Series A Preferred Stock;

(B) 3,000,000 shares of Common Stock reserved in connection with the issuance of stock options under the Corporation's 2001 Stock Option Plan to officers, directors, employees, advisors or consultants of the Corporation, which number of reserved shares may be increased by the approval of at least a majority of the Corporation's Board of Directors (provided that such majority includes all directors elected exclusively by the holders of Series A Preferred Stock (the "Series A Preferred Directors")); notwithstanding the foregoing, any shares of Common

Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(C) all shares of Common Stock issued or issuable to financial institutions, equipment lessors or other commercial lenders in connection with commercial credit agreements, equipment financings or other similar financings, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Series A Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(D) all shares of Common Stock issued or issuable pursuant to agreements to license technology and/or provide sponsored research, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Series A Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock; and

(E) for which adjustment to the Series A Conversion Price is made pursuant to Subsection 2(e)(vi).

(ii) No Adjustment of Series A Conversion Price. Except as set forth in Subsection 2(e)(vi), no adjustment in the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible shall be made, by adjustment of the Series A Conversion Price, in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock (determined pursuant to subsection 2(e)(v)) issued or deemed to be issued by the Corporation is less than the applicable Series A Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(I) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series A Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be readjusted to reflect such decrease or increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(D) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series A Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be readjusted as if:

(I) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Subsection 2(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(E) no readjustment pursuant to clauses (B), (C) or (D) above shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price in effect immediately prior to the original adjustment date, or

(ii) the Series A Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Series A Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Series A Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued with respect to the Series A Preferred Stock:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution; or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid on the date fixed therefor, the adjustment previously made in the Series A Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Series A Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the time of actual payment of such dividend or distribution.

(iv) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(1) but excluding Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(2), which event is dealt with in Subsection 2(e)(vi)(1)), without consideration or for a consideration per share less than the Series A Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the then-existing Series A Conversion Price shall be reduced, concurrently with such issue, to a price determined in accordance with the following formula:

$$NCP = \frac{P_1Q_1 + AC}{Q_1 + Q_2}$$

where:

NCP = New Series A Conversion Price.

$P_1$ = Series A Conversion Price in effect immediately prior to new issue.

$Q_1$ = Number of shares of Common Stock outstanding, or deemed to be outstanding as set forth below, immediately prior to such issue.

AC = The aggregate consideration received by the Corporation for the shares of Common Stock issued, or deemed to have been issued, in the subject transaction.

$Q_2$ = Number of shares of Common Stock issued, or deemed to have been issued, in the subject transaction.

provided, that for the purpose of this Subsection 2(e)(iv), all shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 2(e)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Subsection 2(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Corporation's Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 2(e)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard

to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event the Corporation shall be deemed to issue Additional Shares of Common Stock pursuant to Subsection 2(e)(iii)(2) in a stock dividend, stock distribution or subdivision, the Series A Conversion Price in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such deemed issuance, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series A Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in assets or in securities of the Corporation other than shares of Common Stock, and other than as otherwise adjusted in this Section 2, then and in each such event provision shall be made so that the holders of the Series A Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of assets or securities of the Corporation that they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such assets or securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(g) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a merger, consolidation, or sale of assets provided for below), then and in each such event the holder of Series A Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property

receivable upon such reorganization, reclassification, or other change, by the holder of a number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets (other than a consolidation, merger or sale which is treated as a liquidation with respect to the Series A Preferred Stock pursuant to Subsection 1(c)), each share of Series A Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Series A Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Corporation's Board of Directors) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interest thereafter of the holders of such Series A Preferred Stock, to the end that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such Series A Preferred Stock.

(i) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and mail to each affected holder of Series A Preferred Stock, by first class mail, postage prepaid, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The certificate shall set forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of Series A Preferred Stock.

(k) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock:

(A) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (i) and (ii) above; and

(B) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(l) Common Stock Reserved. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Certain Taxes. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Series A Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Series A Preferred Stock.

(n) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any Series A Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock in any manner which interferes with the timely conversion or transfer of such Series A Preferred Stock or Common Stock.

(o) Good Faith. If any event occurs as to which in the reasonable opinion of the Board of Directors of the Corporation, in good faith, the other provisions of this Section 2 are not strictly applicable but the lack of any adjustment in the Series A Conversion Price would not in the reasonable opinion of the Board fairly protect the Conversion Rights of the holders of such Series A Preferred Stock in accordance with the basic intent and principles of such provisions, or if strictly applicable would not fairly protect the Conversion Rights of the holders of such Series A Preferred Stock in accordance with the basic intent and principles of such provisions, then the Board of Directors of the Corporation shall cause the Corporation forthwith to make such adjustment, if any, to the Series A Conversion Price, on a basis consistent with the basic intent and principles of this Section 2, as it in good faith considers necessary to preserve, without dilution, the Conversion Rights of all the holders of such Series A Preferred Stock.

Section 3. Redemption Event.

(a) The holders of at least two-thirds (2/3) in interest of the then issued and outstanding shares of Series A Preferred Stock, voting as a single class, may vote to cause the Corporation, on May 25, 2007 and on each of the first and second anniversaries thereof (each such date being referred to hereinafter as a "Redemption Date"), to redeem from such holder, at the Original Series A Per Share Purchase Price, plus (i) any dividends declared or accrued but unpaid thereon, if any, and (ii) an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series A Per Share Purchase Price from the date of May 25, 2001 through and until the applicable Redemption Date (the "Redemption Price"), the following respective portions of the number of issued and outstanding shares of Series A Preferred Stock held by such holder on the applicable Redemption Date:

| Redemption Date | Portion of Shares of Preferred Stock To Be Redeemed |
|---|---|
| May 25, 2007 | 33 1/3% |
| May 25, 2008 | 66 2/3% |
| May 25, 2009 | 100% |

(b) If any of the outstanding shares of Series A Preferred Stock are redeemed by the Corporation pursuant to Section 3(a) above, then all outstanding shares of Series A Preferred Stock must be redeemed by the Corporation in accordance with Section 3(a). However, if the funds of the Corporation legally available for redemption of Series A Preferred Stock on any Redemption Date are insufficient to redeem the entire required amount of outstanding shares of Series A Preferred Stock on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares of Series A Preferred Stock ratably on the basis of the number of shares of Series A Preferred Stock which would be redeemed on such date if the funds of the Corporation legally available therefor had been sufficient to redeem the entire required amount of outstanding shares of Series A Preferred Stock on such date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Series A Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence. The portion of the Redemption Price due but unpaid on any Redemption Date shall accrue interest at the rate of fifteen percent (15%) per annum until paid, and any payments by the Corporation shall be applied first to such interest and then to reducing the amount of the unpaid Redemption Price.

(c) Upon receipt by the Corporation of a written request by the holders of Series A Preferred Stock to redeem their shares in accordance with Section 3(a) above, the Corporation will become obligated to redeem on such Redemption Date all then outstanding shares of Series A Preferred Stock in accordance with Section 3(a) (other than such shares of Series A Preferred Stock as are duly converted pursuant to Section 2 hereof prior to the close of business on the fifth full day preceding the Redemption Date). In case less than all shares of Series A Preferred Stock represented by any certificate are redeemed in any redemption pursuant to this Section 3, a new certificate will

be issued representing the unredeemed shares of Series A Preferred Stock without cost to the holder thereof.

(d) Unless there shall have been a default in payment of the applicable Redemption Price (pursuant to Section 3(b) above or otherwise), no share of Series A Preferred Stock shall be entitled to any dividends declared after its Redemption Date, and on such Redemption Date all rights of the holder of such share as a stockholder of the Corporation by reason of the ownership of such share will cease, except the right to receive the applicable Redemption Price for such share, without interest, upon presentation and surrender of the certificate representing such share, and such share will not from and after such Redemption Date be deemed to be outstanding.

Section 4. Restrictions.

(a) At any time when at least 500,000 shares of Series A Preferred Stock are outstanding, except where the vote of the holders of a greater number of shares of Series A Preferred Stock is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or by this Certificate of Incorporation, without the affirmative vote or written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock, voting as a separate single class, the Corporation will not:

(i) amend, alter or change the designation of any preferences, voting or other powers, qualifications, or special or relative rights or privileges of any series of Preferred Stock that adversely affects such Preferred Stock or the holders thereof;

(ii) increase or decrease (other than pursuant to a redemption or conversion contemplated by this Certificate of Incorporation) the authorized number of shares of any series of Preferred Stock;

(iii) create, authorize or issue any class or series of stock having any preference or priority over or being on a parity with any such preference or priority of the Series A Preferred Stock or any security convertible into or exchangeable or exercisable for any such class a series of stock;

(iv) effect any license of the Corporation’s technology, other than in the ordinary course of business, in such a manner as to have the same economic effect as the sale of all or substantially all of the properties or assets of the Corporation;

(v) effect any liquidation, dissolution or winding up of the Corporation;

(vi) effect any sale, lease, assignment, transfer or other conveyance (other than the grant of a mortgage or security interest in connection with indebtedness for borrowed money) of all or substantially all of the properties or assets of the Corporation;

(vii) effect any amendment, alteration or change of this Certificate of Incorporation that adversely affects any of the rights of the Series A Preferred Stock set forth in this Certificate of Incorporation or by law;

(viii) effect any redemption or repurchase with respect to any shares of Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements approved by the Corporation's Board of Directors that permit the Corporation to repurchase such shares at no greater amount than their original purchase price upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(ix) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any shares of Series A Preferred Stock otherwise than by redemption in accordance with Section 3 hereof or by conversion in accordance with Section 2 hereof;

(x) reissue any share of any Series A Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise;

(xi) effect any reclassification or other change of any stock, or any recapitalization of the Corporation;

(xii) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any of its wholly-owned subsidiaries, any stock of such subsidiary;

(xiii) change the authorized number of directors of the Corporation, or the number as to which the Series A Preferred Stock has special voting rights, or the manner in which the Series A Preferred Stock may exercise its special voting rights;

(xiv) effect any consolidation or merger involving the Corporation or any of its subsidiaries (not including a consolidation or merger involving only the Corporation and one or more of its wholly-owned subsidiaries and no other entities, or a consolidation or merger involving only two or more of the Corporation's wholly-owned subsidiaries and no other entities); or

(xv) effect any transaction or series of transactions by which the Corporation issues securities having voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions, or otherwise having the effect of transferring voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions (for purposes of determining voting power for this subsection, all securities convertible into Common Stock shall be assumed to have been converted, and all options, warrants and other rights to acquire Common Stock or other securities convertible into Common Stock, whether then or at some time in the future, shall be assumed to have been exercised).

(b) Notwithstanding any other provision of this Certificate of Incorporation or the Corporation's Bylaws to the contrary, written notice of any action specified in Subsection 4(a) shall be given to each holder of Series A Preferred Stock entitled to vote or consent with respect to such action at least twenty (20) days before the date on which the books of the Corporation shall close or a record shall be taken with respect to such proposed action, or, if there shall be no such date, at least twenty (20) days before the date when such proposed action is scheduled to take place. Any holder of outstanding shares of Series A Preferred Stock may waive any notice required by this Subsection 4(b) by a written document specifically indicating such waiver.

Section 5. Voting Rights.

(a) Voting by Preferred Stock and Common Stock. Except as otherwise required by law or set forth in this Certificate of Incorporation, the holders of Series A Preferred Stock shall be entitled to notice of any meeting of stockholders and shall vote together with the holders of Common Stock as a single class upon any matter submitted to the stockholders for a vote. With respect to all questions as to which, by law or by this Certificate of Incorporation, stockholders are required to vote by classes or series, the Series A Preferred Stock shall vote separately as a single class and series apart from the Common Stock. Shares of Common Stock and Series A Preferred Stock shall entitle the holders thereof to the following number of votes on any matter as to which they are entitled to vote:

(i) holders of Common Stock shall have one vote per share; and

(ii) holders of Series A Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Series A Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the date of any written consent.

(b) Election of Directors.

(i) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series A Preferred Stock (voting as a separate single class) will elect three (3) directors.

(ii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Common Stock (voting as a separate single class) will elect three (3) directors.

(iii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of voting capital stock of the Corporation shall vote together as a single class to elect one (1) director.

(iv) Notwithstanding any Bylaw provisions to the contrary, only the stockholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in

the seat formerly held by such director, all in accordance with the applicable provisions under Delaware law.

(c) Number of Board of Directors. Any provision of the Bylaws of the Corporation to the contrary notwithstanding, the number of directors constituting the entire Board of Directors of the Corporation may not be increased above seven (7) without the prior written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock (voting as a separate single class).

(d) Calling of Stockholder Meetings. In addition to any rights which may be available under the Corporation's Bylaws or otherwise under law, the holders of not less than twenty-five percent (25%) in voting power of the then issued and outstanding shares of Series A Preferred Stock shall be entitled to call meetings of the stockholders of the Corporation. Within five (5) business days after written application by the holders of not less than twenty-five percent (25%) in voting power of the then issued and outstanding shares of Series A Preferred Stock, the President or Secretary, or such other officer of the Corporation as may be authorized in the Bylaws of the Corporation to give notice of meetings of stockholders of the Corporation, shall notify each stockholder of the Corporation entitled to such notice of the date, time, place and purpose of such meeting. No meeting of stockholders called pursuant to this Subsection 5(d) shall take place more than fourteen (14) days after the date notice of such meeting is given.

(e) Vacancies on Board.

(i) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Series A Preferred Stock voting as a separate single class, the remaining director or directors so elected by the holders of the Series A Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of the Series A Preferred Stock, then the holders of a majority of the shares of the Series A Preferred Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Common Stock voting as a separate single class, the remaining director or directors so elected by the holders of the Common Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of the Common Stock, then the holders of a majority of the shares of the Common Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(iii) In the case of any vacancy in the office of the director elected both by the holders of the Series A Preferred Stock and the holders of the Common Stock, the remaining

directors may, by affirmative vote of a majority thereof (or the remaining director if there is but one) elect a successor to hold the office for the unexpired term of the director whose place shall be vacant.

(f) Termination of Certain Voting Rights. The method for election of directors set forth in Section 5(b) above, the restriction on the size of the Corporation's Board of Directors set forth in Section 5(c) above and the ability of the holders of Series A Preferred Stock to call a stockholder meeting set forth in Section 5(d) above shall all automatically terminate and be of no further force or effect upon the earliest to occur of (1) a Qualified Public Offering, (2) the merger or consolidation of the Corporation with or into any other corporation or entity that results in all Series A Preferred Stock being converted into Common Stock (unless stockholders of the Corporation immediately prior to such transaction are holders of at least a majority of the voting securities of the surviving or acquiring corporation thereafter, and for the purposes of this calculation, voting securities of the surviving or acquiring corporation which any stockholder of the corporation owned immediately prior to such merger or consolidation as stockholders of another party to the transaction shall be disregarded) or (3) when less than 500,000 shares of Series A Preferred Stock (excluding shares of Common Stock issued upon the conversion of any shares of Series A Preferred Stock) are outstanding.

Section 6. Dividends.

(a) The holders of the Series A Preferred Stock shall be entitled to receive, when and if declared by the Corporation's Board of Directors, out of any funds legally available therefor, preferential non-cumulative dividends in cash at the rate of five and four-hundredths cents ($0.0504) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum.*

(b) No dividends or other distributions (whether payable in cash, securities, property or other assets) shall be paid on any Common Stock of the Corporation until dividends have been paid on the Series A Preferred Stock in a total amount equal to the product of $0.0504 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) multiplied by the number of years and portion thereof (rounded up to a whole integer) elapsed since the first original issuance of the Series A Preferred Stock.

(c) Subject to Subsection 6(b) above, dividends and distributions may be declared and paid on Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation; provided, however, that when and as dividends and distributions are declared and paid on shares of Common Stock, the Corporation shall declare and pay at the same time to each holder of Series A Preferred Stock, in addition to that which may be paid to satisfy the conditions set forth in Subsection 6(b) above, a dividend or distribution equal to the dividend or distribution which would have been payable to such holder if the shares of Series A Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution.

(d) No dividends or distributions shall be declared or paid on the Common Stock or Preferred Stock except as set forth in this Section 6.

(e) As used herein, “distribution” means the transfer of cash or property without consideration, whether by way of dividend or otherwise (except a dividend in shares Common Stock of the Corporation) or the purchase of shares of the Corporation for cash or property.

(f) The prohibition on payment of dividends and other distributions set forth in Subsection 6(c) above shall not apply to:

(i) Dividends payable solely in the Common Stock of the Corporation;

(ii) Acquisitions of Common Stock by the Corporation at a price not greater than the amount paid by service providers for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase;

(iii) Acquisitions of Common Stock by the Corporation pursuant to its right of repurchase set forth in the Stock Repurchase Agreement, dated as of May 25, 2001, among the Corporation, Michael D. Hooven and Susan Spies;

(iv) Acquisitions of stock in exercise of the Corporation’s right of first refusal upon a proposed transfer; or

(v) A distribution described in Section 1 above.

Section 7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 8. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the shares of Common Stock.

Section 9. Notices. All notices and other communications to any party required or permitted to be sent pursuant to this Article IV (collectively, “Notices”) shall be contained in a written instrument addressed to such party at such party’s address as it appears on the books of the Corporation and shall be deemed given (a) when delivered in person or duly sent by fax showing confirmation of receipt, (b) five (5) days after being duly sent by first class mail, postage prepaid (other than in the case of Notices to or from any non-U.S. resident, which Notices must be sent in the manner specified in clause (a) or (c)), or (c) two (2) days after being duly sent by DHL, Fedex or other recognized express international courier service.

**EXHIBIT 3.1.2**

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 11:00 AM 11/29/2001*
*010604916 – 3304415*

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATRICURE, INC.

AtriCure, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted proposing and declaring advisable that the Certificate of Incorporation of the Corporation be amended and that such amendment be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED: That the Board of Directors of the Corporation recommends and deems it advisable that the Certificate of Incorporation of the Corporation be amended by deleting the first full paragraph of Article IV thereof and substituting therefor the following:

"The total number of shares of all classes of stock which the Corporation has authority to issue is 28,412,626 shares, consisting of (i) 20,000,000 shares of Common Stock, par value $.0001 per share (the "Common Stock"), and (ii) 8,412,626 shares of Preferred Stock, par value $.0001 per share (the "Preferred Stock"), all of which shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock")."

RESOLVED: That the aforesaid proposed amendment be submitted to the stockholders of the Corporation for their consideration; and

RESOLVED: That following approval by the stockholders of the aforesaid amendment (the "Amendment") as required by law, the officers of the Corporation be, and they hereby are, and each of them hereby is, authorized and directed (i) to prepare, execute and file with the Secretary of State of the State of Delaware, a Certificate of Amendment setting forth the Amendment in the form approved by the stockholders and (ii) to take any and all other actions necessary,

desirable or convenient to give effect to the Amendment or otherwise to carry out the purposes of the foregoing Resolutions.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the Amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware, and written notice of the adoption of the Amendment has been given as provided in section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the Amendment was duly adopted in accordance with the applicable provisions of sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AtriCure, Inc. has caused this Certificate of Amendment to be signed by its President, this 31st day of October, 2001.

ATRICURE, INC.

By: /s/ Michael D. Hooven

Michael D. Hooven
President

**EXHIBIT 3.1.3**

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 10:00 AM 06/06/2002*
*020362819 – 3304415*

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATRICURE, INC.

AtriCure, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted proposing and declaring advisable that the Certificate of Incorporation of the Corporation be amended and that such amendment be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED: That the Board of Directors of the Corporation recommends and deems it advisable that the Certificate of Incorporation of the Corporation be amended by deleting Article IV thereof and substituting for said Article IV the new Article IV set forth on Exhibit A attached hereto; and

RESOLVED: That the aforesaid proposed amendment be submitted to the stockholders of the Corporation for their consideration; and

RESOLVED: That following the approval by the stockholders of the aforesaid amendment (the "Amendment") as required by law, the officers of the Corporation be, and they hereby are, and each of them hereby is, authorized and directed (i) to prepare, execute and file with the Secretary of State of the State of Delaware a Certificate of Amendment setting forth the Amendment in the form approved by the stockholders and (ii) to take any and all other actions necessary, desirable or convenient to give effect to the Amendment or otherwise to carry out the purposes of the foregoing Resolutions.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the Amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware, and written notice of the adoption of the Amendment has been given as provided in section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the Amendment was duly adopted in accordance with the applicable provisions of sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AtriCure, Inc. has caused this certificate to be signed by its President this 5th day of June 2002.

ATRICURE, INC.

By: /s/ Michael D. Hooven

Name: Michael D. Hooven
Title: President

EXHIBIT A

IV.

The total number of shares of all classes of stock which the Corporation has authority to issue is 63,720,615 shares, consisting of (i) 40,000,000 shares of Common Stock, par value $.0001 per share (the "Common Stock"), and (ii) 23,720,615 shares of Preferred Stock, par value $.0001 per share (the "Preferred Stock"), of which 8,293,679 shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 15,426,936 shares are designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock").

Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the sum of the number of shares of Common Stock then outstanding and the number of shares of Common Stock to be reserved pursuant to Subsection 2(1) below) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if converted basis).

The powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect of each class or series of stock of the Corporation shall be as follows:

Section 1. Liquidation Rights.

(a) Liquidation Payments.

(i) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary (a **"Liquidation Event"**), before any distribution or payment shall be made to the holders of any other stock of the Corporation, (a) the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $0.63 per share of Series A Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series A Preferred Stock; such price per share, the "Original Series A Per Share Price"), plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series A Preferred Stock with respect to such liquidation, dissolution or winding up, and (b) the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $1.43 per share of Series B Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series B Preferred Stock; such price per share, the "Original Series B Per Share Price") plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such liquidation, dissolution or winding up.

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock and Series B Preferred Stock of all amounts

distributable to them under this Subsection l(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Subsection l(a)(i).

No payment shall be made with respect to the Common Stock unless and until full payment has been made to the holders of the Preferred Stock of the amounts that they are entitled to receive under this Subsection l(a)(i).

(ii) After the payments described in Subsection l(a)(i) shall have been made in full to the holders of the Preferred Stock, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock, the remaining assets available for distribution shall be distributed among the holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock ratably in proportion to the number of shares of Common Stock then held by them or issuable to them upon conversion of the Series A Preferred Stock or Series B Preferred Stock then held by them. Such ratable distribution of the remaining assets shall continue until such time as (x) the holders of the Series A Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $1.89 per share (in the case of the cessation of participation of the holders of Series A Preferred Stock) and (y) the holders of the Series B Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $4.29 per share (in the case of the cessation of participation of the holders of Series B Preferred Stock). After such time as the holders of the Series A Preferred Stock and the Series B Preferred Stock have received distributions totaling $1.89 per share and $4.29 per share, respectively, all remaining assets shall be distributed ratably exclusively to the holders of the Common Stock (and not to any holders of Preferred Stock).

(iii) Upon conversion of shares of Preferred Stock into shares of Common Stock pursuant to Section 2 below, the holders of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(iv) The amounts payable with respect to shares of Preferred Stock under this Subsection l(a) are sometimes hereinafter referred to as “Liquidation Payments.”

(v) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder’s shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(b) Distributions Other than Cash. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation. The Corporation shall give prompt written notice of such valuation to each holder of Preferred Stock. Any securities shall be valued as follows:

(i) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the distribution;

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

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors; and

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be made with an appropriate discount from the market value determined as above to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(c) Merger as Liquidation, etc. The merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) in voting power of the capital stock of the surviving corporation, in which case the provisions of Subsection 2(h) shall apply), the closing of any transaction, or series of transactions, in which more than fifty percent (50%) of the voting power of the Corporation is sold to another corporation or entity or the sale of all, or substantially all, of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1, unless the holders of (i) at least sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock; and (ii) at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, each such series voting as separate classes, elect to the contrary, such election to be made by giving written notice thereof to the Corporation at least five (5) days before the effective date of such event. If such notice is given with respect to the Series A Preferred Stock and Series B Preferred Stock, the provisions of Subsection 2(h) shall apply to such Preferred Stock. Unless such election is made by the requisite holders of a series of Preferred Stock, any amounts received by the holders of such series of Preferred Stock as a result of such merger or consolidation shall be deemed to be applied toward, and all consideration received by the Corporation in such asset sale together with all other available assets of the Corporation shall be distributed toward, the Liquidation Payments in the order of preference set forth in Subsection l(a).

(d) Notice. Notice of any proposed liquidation , dissolution or winding up of the affairs of the Corporation (including any merger, consolidation, sale of capital stock or sale of

assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection l(c)), stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given to the holders of record of Preferred Stock not less than thirty (30) days prior to the payment date stated therein. Any holder of outstanding shares of Preferred Stock may waive notice required by this Subsection by a written document specifically indicating such waiver.

Section 2. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert; Conversion Price. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the principal executive office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price by the Conversion Price for such series, determined as hereinafter provided, in effect at the time of conversion. The "Issuance Price" shall be $0.63 per share for the Series A Preferred Stock and $1.43 per share for the Series B Preferred Stock. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Preferred Stock without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall initially be $0.63 per share of Common Stock for the Series A Preferred Stock and $1.43 per share of Common Stock for the Series B Preferred Stock subject, in each case, to adjustment in order to adjust the number of shares of Common Stock into which the Preferred Stock is convertible, as hereinafter provided. All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for such series of Preferred Stock, upon the closing of a firm commitment underwritten public offering (a "Qualified Public Offering") pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public at an offering price per share (prior to underwriter commissions and discounts) of not less than $4.29 (as adjusted to reflect any stock dividends, distributions, combinations, reclassifications or other like transactions effected by the Corporation in respect of its Common Stock) and with proceeds (after deduction of underwriters' commissions and expenses) to the Corporation of not less than $30,000,000.00 (in the event of which Qualified Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted the Preferred Stock until the closing of such Qualified Public Offering). Notwithstanding the foregoing, a registration relating solely to a transaction under Rule 145 under the Act (or any successor thereto) or to an employee benefit plan of the Corporation shall not be deemed to be a Qualified Public Offering causing the automatic conversion of the Preferred Stock into shares of Common Stock.

(ii) With respect to the Series A Preferred Stock, each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series A Preferred Stock, upon the written election of the holders of not less than sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock, voting as a separate class. With respect to the Series B Preferred Stock, each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series B Preferred Stock, upon the written election of the holders of not less than fifty percent (50%) of the then issued and outstanding shares of Series B Preferred Stock, voting as a separate class.

(c) Mechanics of Automatic Conversions. Upon the occurrence of either of the events specified in Subsection 2(b), the outstanding shares of the applicable series of Preferred Stock shall be converted automatically without any further action by the holders of shares of such series and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that all holders of shares of Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Subsection 2(b) triggering such conversion, including the date such event occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. On the Automatic Conversion Date, all rights with respect to the series of Preferred Stock so converted, shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such series of Preferred Stock has been converted, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of any Preferred Stock, the holders of such series of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, promptly at such office and in the holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock so surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. No fractional share of Common Stock shall be issued upon automatic conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock on the Automatic Conversion Date, as determined in good faith by the Corporation's Board of Directors.

(d) Mechanics of Optional Conversions. Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock pursuant to Subsection 2(a), the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Preferred Stock so converted, shall terminate, except any of the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted and cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock being converted to and including the time of conversion. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. No fractional share of Common Stock shall be issued upon optional conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair market value of one share of Common Stock, as determined in good faith by the Corporation's Board of Directors. The Corporation shall, as soon as practicable (but in no event later than five (5) business days) after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(i) If the conversion is in connection with an underwritten offering of securities pursuant to the Act the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) If the conversion is in connection with a liquidation described in Subsection l(c) above, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the consummation of the liquidation, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the consummation of the liquidation.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection 2(e), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the first date on which a share of Series B Preferred Stock was issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 2(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) all shares of Common Stock issuable upon conversion of, or as a dividend upon, shares of Preferred Stock;

(B) 4,500,000 shares of Common Stock reserved in connection with Options issued or to be issued under the Corporation's 2001 Stock Option Plan, as amended or restated, to officers, directors, employees, advisors or consultants of the Corporation, which number of reserved shares may be increased by the approval of at least a majority of the Corporation's Board of Directors (provided that such majority includes all directors elected exclusively by the holders of Preferred Stock in accordance with Section 5(b)(i) and 5(b)(ii) (the "Preferred Directors")); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(C) all shares of Common Stock issued or issuable to financial institutions, equipment lessors or other commercial lenders in connection with commercial credit agreements, equipment financings or other similar financings, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(D) all shares of Common Stock issued or issuable pursuant to agreements to license technology and/or provide sponsored research, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock; and

(E) for which adjustment to the Conversion Price for such series of Preferred Stock is made pursuant to Subsection 2(e)(vi).

(ii) No Adjustment of Conversion Price. Except as set forth in Subsection 2(e)(vi), no adjustment in the number of shares of Common Stock into which each share of Preferred Stock is convertible shall be made, by adjustment of the Conversion Price for such series of Preferred Stock, in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock (determined pursuant to Subsection 2(e)(v)) issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be

readjusted to reflect such decrease or increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(D) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be readjusted as if:

(I) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Subsection 2(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(E) no readjustment pursuant to this Section 2(e) shall have the effect of increasing the applicable Conversion Price for a series of Preferred Stock; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued with respect to the Preferred Stock:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution; or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the time of actual payment of such dividend or distribution.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(l) but excluding Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(2), which event is dealt with in Subsection 2(e)(vi)(l)), without consideration or for a consideration per share less than the Conversion Price for Series A Preferred Stock or Series B Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the then-existing Conversion Price for such affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price determined in accordance with the following formula:

$$NCP = \frac{P_1 Q_1 + AC}{Q_1 + Q_2}$$

where:

NCP = New Conversion Price.

$P_1$ = Conversion Price in effect immediately prior to new issue.

$Q_1$ = Number of shares of Common Stock outstanding, or deemed to be outstanding as set forth below, immediately prior to such issue.

AC = The aggregate consideration received by the Corporation for the shares of Common Stock issued, or deemed to have been issued, in the subject transaction.

$Q_2$ = Number of shares of Common Stock issued, or deemed to have been issued, in the subject transaction.

provided, that for the purpose of this Subsection 2(e)(iv), all shares of Common Stock issuable upon conversion of shares of Preferred Stock outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 2(e)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Subsection 2(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Corporation's Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 2(e)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event the Corporation shall be deemed to issue Additional Shares of Common Stock pursuant to Subsection 2(e)(iii)(2) in a stock dividend, stock distribution or subdivision, the Conversion

Price in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such deemed issuance, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in assets or in securities of the Corporation other than shares of Common Stock, and other than as otherwise adjusted in this Section 2, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of assets or securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such assets or securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(g) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a merger, consolidation, or sale of assets provided for below), then and in each such event the holder of Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by the holder of a number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets (other than a consolidation, merger or sale which is treated as a liquidation with respect to the Preferred Stock pursuant to Subsection 1(c)), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Corporation’s Board of Directors) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interest thereafter of the holders of such Preferred Stock, to the end

that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such Preferred Stock.

(i) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and mail to each affected holder of Preferred Stock, by first class mail, postage prepaid, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The certificate shall set forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of Preferred Stock affected.

(k) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock:

(A) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (i) and (ii) above; and

(B) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(l) Common Stock Reserved. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting

the conversion of the shares of Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Certain Taxes. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock.

(n) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(o) Good Faith. If any event occurs as to which in the reasonable opinion of the Board of Directors of the Corporation, in good faith, the other provisions of this Section 2 are not strictly applicable but the lack of any adjustment in the Conversion Price would not in the reasonable opinion of the Board fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, or if strictly applicable would not fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, then the Board of Directors of the Corporation shall cause the Corporation forthwith to make such adjustment, if any, to the Conversion Price, on a basis consistent with the basic intent and principles of this Section 2, as it in good faith considers necessary to preserve, without dilution, the Conversion Rights of all the holders of such Preferred Stock.

Section 3. Redemption Event.

(a) Upon request in writing to the Corporation by either (y) the holders of at least 66 2/3% in interest of the then issued and outstanding shares of Series A Preferred Stock, making a request as a separate class or (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, making a request as a separate class (the holders of such requesting series of Preferred Stock, the "Requesting Holders," and such request, an "Initial Redemption Request"), the Requesting Holders may cause the Corporation, on June 6, 2007 and on each of the first and second anniversaries thereof (each such date being referred to hereinafter as a "Redemption Date"), to redeem from all holders of such series of Preferred Stock, at the Original Series A Per Share Price or the Original Series B Per Share Price, as applicable, plus (i) any dividends declared or accrued but unpaid thereon, if any, and (ii) (x) if Series A Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series A Per Share Price from the date of May 25, 2001 through and until the applicable Redemption Date or (y) if Series B Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series B

Per Share Price from the date of June 6, 2002 through and until the applicable Redemption Date (the redemption price for the Series A Preferred Stock or Series B Preferred Stock, as applicable, the "Redemption Price"), the following respective portions of the number of issued and outstanding shares of Preferred Stock held by all holders of such series of Preferred Stock on the applicable Redemption Date:

| Redemption Date | Portion of Shares of Preferred Stock To Be Redeemed |
|---|---|
| June 6, 2007 | 33 1/3% |
| June 6, 2008 | 66 2/3% |
| June 6, 2009 | 100% |

(b) If any of the outstanding shares of a particular series of Preferred Stock are redeemed by the Corporation pursuant to Subsection 3(a) above, then all outstanding shares of such series of Preferred Stock must be redeemed by the Corporation in accordance with Subsection 3(a). However, if the funds of the Corporation legally available for redemption of Preferred Stock on any Redemption Date are insufficient to redeem the entire number of shares of Preferred Stock required under this Section 3 to be redeemed on such date, then those funds which are legally available will be used to redeem the maximum possible number of such shares of Preferred Stock ratably on the basis of the number of shares of Preferred Stock which would be redeemed on such date if the funds of the Corporation legally available therefor had been sufficient to redeem the entire number of shares of Preferred Stock required to be redeemed on such date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence. The portion of the Redemption Price due but unpaid on any Redemption Date shall accrue interest at the rate of fifteen percent (15%) per annum until paid, and any payments by the Corporation shall be applied first to such interest and then to reducing the amount of the unpaid Redemption Price.

(c) The Corporation shall provide notice of its receipt of an Initial Redemption Request, specifying the time, manner and place of redemption and the Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address for such holder as last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than thirty (30) days prior to the applicable Redemption Date. All holders of record of the series of Preferred Stock that did not make such Initial Redemption Request may nonetheless elect to become, together with the initial Requesting Holders, the "Requesting Holders" on such Redemption Date if written notice(s) is mailed to the Corporation, by first class or registered mail, postage prepaid, at least ten (10) days prior to applicable Redemption Date, which notice(s) includes the requisite percent of the then issued and outstanding shares of such series of Preferred Stock necessary to make an Initial Redemption Request pursuant to Subsection 3(a) above.

(d) Upon receipt by the Corporation of an Initial Redemption Request, the Corporation will become obligated to redeem on the applicable Redemption Date all then

outstanding shares of the applicable series of Preferred Stock in accordance with Subsection 3(a) (other than the shares of such series of Preferred Stock as are duly converted pursuant to Section 2 hereof prior to the close of business on the fifth (5th) full day preceding the Redemption Date). Except as provided in Subsection 3(b) above, each Requesting Holder shall surrender to the Corporation on the applicable Redemption Date the certificate(s) representing the shares to be redeemed on such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Redemption Price shall be paid to the order of each such Requesting Holder and each certificate surrendered for redemption shall be canceled. In the case less than all Preferred Stock represented by any certificate is redeemed in any redemption pursuant to this Section 3, a new certificate will be issued representing the unredeemed Preferred Stock without cost to the holder thereof.

(e) Until a share of Preferred Stock is actually redeemed, each such share shall be entitled to any dividends declared upon such series of Preferred Stock and, until a share of Preferred Stock is actually redeemed, all rights of the holder of such share as a stockholder of the Corporation by reason of the ownership of such share (including, without limitation, voting rights and conversion rights) will continue in full force and effect.

Section 4. Restrictions.

(a) At any time when at least 1,000,000 shares of Preferred Stock are outstanding, except where the vote of the holders of a greater number of shares of Series A Preferred Stock and/or Series B Preferred Stock is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or by this Certificate of Incorporation, without the affirmative vote or written consent of both: (y) the holders of at least a majority in interest of the then issued and outstanding shares of Series A Preferred Stock; and (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, voting as separate classes, the Corporation will not:

(i) amend, alter or change the designation of any preferences, voting or other powers, qualifications, or special or relative rights or privileges of any series of Preferred Stock that adversely affects such Preferred Stock or the holders thereof;

(ii) increase or decrease (other than pursuant to a redemption or conversion contemplated by this Certificate of Incorporation) the authorized number of shares of any series of Preferred Stock;

(iii) create, authorize or issue any class or series of stock having any preference or priority over or being on a parity with any such preference or priority of any series of Preferred Stock or any security convertible into or exchangeable or exercisable for any such class a series of stock;

(iv) effect any license of the Corporation’s technology, other than in the ordinary course of business, in such a manner as to have the same economic effect as the sale of all or substantially all of the properties or assets of the Corporation;

(v) effect any liquidation, dissolution or winding up of the Corporation;

(vi) effect any sale, lease, assignment, transfer or other conveyance (other than the grant of a mortgage or security interest in connection with indebtedness for borrowed money) of all or substantially all of the properties or assets of the Corporation;

(vii) effect any amendment, alteration or change of this Certificate of Incorporation that adversely affects any of the rights of any series of Preferred Stock set forth in this Certificate of Incorporation or by law;

(viii) effect any redemption or repurchase with respect to any shares of Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements approved by the Corporation's Board of Directors that permit the Corporation to repurchase such shares at no greater amount than their original purchase price upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(ix) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any shares of Preferred Stock otherwise than by redemption in accordance with Section 3 hereof or by conversion in accordance with Section 2 hereof;

(x) reissue any share of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise;

(xi) effect any reclassification or other change of any stock, or any recapitalization of the Corporation;

(xii) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any of its wholly-owned subsidiaries, any stock of such subsidiary;

(xiii) change the authorized number of directors of the Corporation, or the number as to which the Preferred Stock has special voting rights, or the manner in which the Preferred Stock may exercise its special voting rights;

(xiv) effect any consolidation or merger involving the Corporation or any of its subsidiaries (not including a consolidation or merger involving only the Corporation and one or more of its wholly-owned subsidiaries and no other entities, or a consolidation or merger involving only two or more of the Corporation's wholly-owned subsidiaries and no other entities); or

(xv) effect any transaction or series of transactions by which the Corporation issues securities having voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions, or otherwise having the effect of transferring voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions (for purposes of determining voting power for this subsection, all securities convertible into Common Stock shall be assumed to have

been converted, and all options, warrants and other rights to acquire Common Stock or other securities convertible into Common Stock, whether then or at some time in the future, shall be assumed to have been exercised).

(b) Notwithstanding any other provision of this Certificate of Incorporation or the Corporation's Bylaws to the contrary, written notice of any action specified in Subsection 4(a) shall be given to each holder of Preferred Stock entitled to vote or consent with respect to such action at least twenty (20) days before the date on which the books of the Corporation shall close or a record shall be taken with respect to such proposed action, or, if there shall be no such date, at least twenty (20) days before the date when such proposed action is scheduled to take place. Any holder of outstanding shares of Preferred Stock may waive any notice required by this Subsection 4(b) by a written document specifically indicating such waiver.

Section 5. Voting Rights.

(a) Voting by Preferred Stock and Common Stock. Except as otherwise required by law or set forth in this Certificate of Incorporation, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to notice of any meeting of stockholders and shall vote together with the holders of Common Stock as a single class upon any matter submitted to the stockholders for a vote. With respect to all questions as to which, by law or by this Certificate of Incorporation, stockholders are required to vote by classes or series, each of the Series A Preferred Stock and Series B Preferred Stock shall vote as separate classes apart from the Common Stock. Shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock shall entitle the holders thereof to the following number of votes on any matter as to which they are entitled to vote:

(i) holders of Common Stock shall have one vote per share; and

(ii) holders of Series A Preferred Stock and Series B Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Series A Preferred Stock or Series B Preferred Stock (as the case may be) held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the date of any written consent.

(b) Election of Directors.

(i) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series A Preferred Stock (voting as a separate single class) will elect two (2) directors.

(ii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series B Preferred Stock (voting as a separate single class) will elect two (2) directors.

(iii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Common Stock (voting as a separate single

class, and excluding shares of Preferred Stock convertible into shares of Common Stock) will elect three (3) directors.

(iv) At each election of the Corporation's directors, the holders of a majority in interest of the Common Stock, Series A Preferred, and Series B Preferred (voting as a single class on an as-converted basis), will elect one (1) director.

(v) Notwithstanding any Bylaw provisions to the contrary, only the stockholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions under Delaware law.

(c) Number of Board of Directors. Any provision of the Bylaws of the Corporation to the contrary notwithstanding, the number of directors constituting the entire Board of Directors of the Corporation may not be increased above eight (8) without the prior written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class).

(d) Calling of Stockholder Meetings. In addition to any rights which may be available under the Corporation's Bylaws or otherwise under law, the holders of not less than twenty-five percent (25%) in voting power of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class) shall be entitled to call meetings of the stockholders of the Corporation. Within five (5) business days after written application by such holders of Preferred Stock, the President or Secretary, or such other officer of the Corporation as may be authorized in the Bylaws of the Corporation to give notice of meetings of stockholders of the Corporation, shall notify each stockholder of the Corporation entitled to such notice of the date, time, place and purpose of such meeting. No meeting of stockholders called pursuant to this Subsection 5(d) shall take place more than fourteen (14) days after the date notice of such meeting is given.

(e) Vacancies on Board.

(i) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of any series of Preferred Stock voting as a separate single class, the remaining director or directors so elected by the holders of such series of Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of such series of Preferred Stock, then the holders of a majority of the shares of such series of Preferred Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Common Stock voting as a separate single class, the remaining director or directors so elected by the holders of the Common Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or

directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of the Common Stock, then the holders of a majority of the shares of the Common Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(f) Termination of Certain Voting Rights. The method for election of directors set forth in Subsection 5(b) above, the restriction on the size of the Corporation's Board of Directors set forth in Subsection 5(c) above and the ability of the holders of Preferred Stock to call a stockholder meeting set forth in Subsection 5(d) above shall all automatically terminate and be of no further force or effect upon the earliest to occur of (1) a Qualified Public Offering, (2) the merger or consolidation of the Corporation with or into any other corporation or entity that results in all Preferred Stock being converted into Common Stock (unless stockholders of the Corporation immediately prior to such transaction are holders of at least a majority of the voting securities of the surviving or acquiring corporation thereafter, and for the purposes of this calculation, voting securities of the surviving or acquiring corporation which any stockholder of the corporation owned immediately prior to such merger or consolidation as stockholders of another party to the transaction shall be disregarded) or (3) when less than 1,000,000 shares of Preferred Stock (excluding shares of Common Stock issued upon the conversion of any shares of Preferred Stock) are outstanding.

Section 6. Dividends.

(a) The holders of Preferred Stock shall be entitled to receive, when and if declared by the Corporation's Board of Directors, out of any funds legally available therefor, preferential non-cumulative dividends in cash at the rate of (i) five and four-hundredths cents ($0.0504) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series A Preferred Stock, and (ii) eleven and forty-four-hundredths cents ($0.1144) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series B Preferred Stock. Any such dividends shall be distributed ratably among the holders of Series A Preferred Stock and Series B Preferred Stock in proportion to the full amount each such holder is otherwise entitled to receive under this Subsection 6(a).

(b) No dividends or other distributions (whether payable in cash, securities, property or other assets) shall be paid on any Common Stock until (i) all dividends accrued or declared but unpaid on the Preferred Stock shall have been paid in full and (ii) in the event that the Corporation's Board of Directors have not declared a dividend on the Preferred Stock during the then-current calendar year, all dividends are paid in full on the Preferred Stock as if such Board had declared a dividend on the Preferred Stock pursuant to Subsection 6(a) above during the then-current calendar year.

(c) Subject to Subsection 6(b) above, dividends and distributions may be declared and paid on Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation; provided, however, that when and as dividends and distributions are declared and paid on shares of Common Stock, the Corporation shall declare and pay at the same time to each holder of Preferred Stock, in addition to that which may be paid to satisfy the conditions set forth in Subsection 6(b) above, a dividend or distribution equal to the

dividend or distribution which would have been payable to such holder if the shares of Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution.

(d) No dividends or distributions shall be declared or paid on the Common Stock or Preferred Stock except as set forth in this Section 6.

(e) As used herein, "distribution" means the transfer of cash or property without consideration, whether by way of dividend or otherwise (except a dividend in shares of Common Stock) or the purchase of shares of capital stock of the Corporation for cash or property.

(f) The prohibition on payment of dividends and other distributions set forth in Subsection 6(d) above shall not apply to:

(i) Dividends payable solely in the Common Stock of the Corporation approved by the board of directors (including each of the Preferred Directors);

(ii) Acquisitions of Common Stock by the Corporation at a price not greater than the amount paid by service providers for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, so long as such acquisition is approved by the board of directors (including each of the Preferred Directors);

(iii) Acquisitions of Common Stock by the Corporation pursuant to its right of repurchase set forth in the Stock Repurchase Agreement, dated as of May 25, 2001, among the Corporation, Michael D. Hooven and Susan Spies;

(iv) Acquisitions of stock in exercise of the Corporation's right of first refusal upon a proposed transfer approved by the board of directors (including each of the Preferred Directors); or

(v) A distribution pursuant to Section 1 above.

Section 7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 8. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the shares of Common Stock.

Section 9. Notices. All notices and other communications to any party required or permitted to be sent pursuant to this Article IV (collectively, "Notices") shall be contained in a written instrument addressed to such party at such party's address as it appears on the books of the Corporation and shall be deemed given (a) when delivered in person or duly sent by fax showing confirmation of receipt, (b) five (5) days after being duly sent by first class mail, postage prepaid (other than in the case of Notices to or from any non-U.S. resident, which Notices must be sent in the manner specified in clause (a) or (c)), or (c) two (2) days after being duly sent by DHL, Fedex or other recognized express international courier service.

**EXHIBIT 3.3**

# AMENDED AND RESTATED BYLAWS
# OF
# ATRICURE, INC.

*(As Adopted by the Board of Directors on May 24, 2001)*

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**AMENDED AND RESTATED BYLAWS**
**OF**
**ATRICURE, INC.**

## ARTICLE I

Offices

1.1 Principal Office. The principal office of the Corporation in the State of Delaware shall be located in the City of Dover. The Corporation may have such other offices, either within or without the State of Delaware, as the business of the Corporation may require from time to time.

1.2 The Registered Office. The registered office of the Corporation may be, but need not be, identical with its principal office in the State of Delaware. The address of the registered office may be changed from time to time by the Board of Directors.

## ARTICLE II

Stockholders

2.1 Annual Meeting. The annual meeting of the stockholders shall be held at such time, place and on such date as the Board of Directors may designate, said date to be no later than six (6) months following the end of the Corporation's fiscal year. The purpose of such meeting shall be the election of directors and such other business as may properly come before it. If the election of directors shall not be held on the day designated for an annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the stockholders to be held as soon thereafter as may be practicable.

2.2 Special-Meetings. A special meeting of the stockholders of the Corporation may be called at any time by the Chairman of the Board, the President or the Board of Directors, or otherwise as provided by law.

2.3 Notice of Annual or Special Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman of the Board, the President or the Secretary, or the officer or persons calling the meeting, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the stockholder at his or her address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid.

2.4 Closing Transfer Books and Fixing of a Record Date. The Board of Directors of the Corporation may close its stock transfer books for a period not exceeding sixty (60) days nor less than ten (10) days, immediately prior to the date of any meeting of stockholders, or the date for the payment of any dividend or for the allotment of rights, or the date when any exchange or reclassification of shares shall be of effective; or in lieu thereof, may fix in advance a date, not exceeding sixty (60) days and not less than ten (10) days prior to the date of any meeting of stockholders, or to the date for the payment of any dividend or for the allotment of rights, or to the date when any exchange or reclassification of shares shall be effective, as the record date for the determination of stockholders entitled to notice of, or to vote at, such meeting or stockholders entitled to receive payment of any such dividend or to receive any such allotment of rights, or to exercise in respect of any exchange or reclassification of shares; and the stockholders of record on such record date shall be the stockholders entitled to notice of, and to vote at, such meeting, or to receive payment of such dividend or to receive such allotment of rights, or to exercise such rights, in the event of an exchange or reclassification of shares, as the case may be. If the transfer books are not closed and no record date is fixed by the Board of Directors, the date on which notice of the meeting is mailed, or the date on which the resolution of the Board of Directors declaring such dividend is adopted or such other action is taken, as the case may be shall be deemed to be the record date for the determination of the stockholders of the Corporation and the number of shares owned by them for all of the purposes set forth in the immediately preceding sentence. When a determination of stockholders has been made as provided in this Section, such determination shall apply to any adjournment thereof.

2.5 Voting Record. The officer or agent having charge of the transfer book for shares of the Corporation shall make a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, with the address of, and the number of shares held by each stockholder. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the whole course of the meeting.

2.6 Quorum. One third of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of stockholders unless a larger proportion is required to take the action stated in the notice of the meeting, in which case, to constitute a quorum, there shall be present in person or by proxy the holders of record of shares entitling them to exercise the voting power required by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, to take the action stated. unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, if a quorum of stockholders is present, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

2.7 Voting. Each outstanding share of Common Stock authorized by the Corporation’s Certificate of Incorporation to have voting power shall be entitled to one vote upon each matter submitted to a vote at a meeting of stockholders. The voting rights, if any, of classes of shares other than voting Common Stock shall be as set forth in the Corporation’s Certificate of Incorporation or by appropriate legal action of the Board of Directors.

## ARTICLE III

Directors

3.1 General. The business affairs of the Corporation shall be managed by its Board of Directors.

3.2 Number, Tenure and Qualifications. The Board of Directors shall be composed of seven (7) persons, provided that the Board of Directors may, in its discretion, by resolution and in accordance with applicable law, increase or decrease the number of directors. No decrease in the number of directors shall have the effect of shortening the term of any incumbent directors. Each director shall hold office for the term for which he or she is elected or until his or her successor shall have been elected and qualified, whichever period is longer. The directors need not be residents of the State of Delaware, nor need they hold any shares of the capital stock of the Corporation. The Board of Directors shall have authority to amend the Bylaws to prescribe other qualifications for directors.

3.3 Removal and Resignations. At a meeting of stockholders called expressly for that purpose, any director or the entire Board of Directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of the shares of any class are entitled to elect one or more director by the provisions of the Certificate of Incorporation, the provisions of this Section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole. Any director may resign from the Board of Directors at any time by giving written notice to the President or Secretary of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.4 Regular Meeting. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of stockholders, the Board of Directors may provide, by resolution, the time and place, either within or without the State of Delaware, for the holding of additional regular meetings without other notice than such resolution.

3.5 Special meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the President or if the Corporation has more than one director, any two directors. All special meetings of the Board of Directors shall be held at the principal office of the Corporation or such other place as may be specified in the notice of the meeting.

3.6 Notice. Notice of any special meeting shall be given at least two (2) days prior thereto by written notice delivered personally or mailed to each director at his or her business address, or by telegram, if mailed such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting,

except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

3.7 Quorum. A majority of the number of directors fixed by, or determined in accordance with, Section 3.2 hereof shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

3.8 Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise required by the Certificate of Incorporation.

3.9 Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the Board of Directors for a term of office continuing only until the next election of directors by the stockholders.

3.10 Compensation. By resolution of the Board of Directors, each director may be paid his or her expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated stipend as director or a fixed sum for attendance at each meeting of the Board of Directors, or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

3.11 Action by Written Consent. Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

3.12 Meetings by Conference Call. Members of the Board of Directors or any committee designated by such Board, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13 Chairman and Vice-Chairman of the Board. The Board of Directors may appoint one of its members Chairman of the Board of Directors. The Board of Directors may also appoint one of its members as vice-Chairman of the Board of Directors, and such individual shall serve in the absence of the Chairman and perform such additional duties as may be assigned to him or her by the Board of Directors.

**ARTICLE IV**

Officers

4.1 Classes. The officers of the Corporation shall be a President, Vice President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors, as well as such other officers and assistant officers as may be elected or appointed by the Board of Directors, in its discretion, including but not limited to the office of chairman of any committee of the Board of Directors which may be established pursuant to Article VI hereof. Any two or more officers may be held by the same person.

4.2 Election and Term of Office. The officers of the Corporation shall initially be elected by the Board of Directors at the first meeting of the Board of Directors and, thereafter, at each annual meeting of the Board of Directors. If the election of officers shall not be held at any such meeting, such election shall be held as soon thereafter is convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her death, resignation or removal in the manner hereinafter provided.

4.3 Removal and Resignations. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Any officer of the Corporation may resign at any time by giving written notice thereof to the President or Secretary of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.5 Chairman of the Board of Directors. The Chairman of the Board of Directors, if that office be created and filled, may, at the discretion of the Board of Directors, be the chief executive officer of the Corporation and, if such, shall, in general, supervise and control the affairs and business of the Corporation, subject to control by the Board of Directors. The Chairman of the Board shall preside at all meetings of the stockholders and Board of Directors.

4.6 President. The President, unless a Chairman is appointed and designated chief executive officer pursuant to Section 4.5 hereof, shall be the chief executive officer of the Corporation. If no Chairman has been appointed, or in the absence of the Chairman, the President shall preside at all meetings of the stockholders and of the Board of Directors. He or she may sign certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and, in general, shall perform all duties incident to the office

of President and such other duties as may be prescribed by the Board of Directors from time to time. unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to attend, act and vote at any meetings of stockholders of any corporation in which the Corporation may hold stock, and at any such meeting, shall hold and may exercise all rights incident to the ownership of such stock which the Corporation, as owner, might have had and exercised if present. The Board of Directors may confer like powers on any other person or persons.

4.7 Vice-President. In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President (or, in the event there be more than one Vice-President, the Vice-Presidents in order designated at the time of their election, or in the absence of any designation, then, in the order of their election), if that office be created and filled, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President may sign, with the Secretary or an Assistant Secretary, certificates for shares of the Corporation; and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

4.8 Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies and other depositories as shall be selected by the Board of Directors; and in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Chairman of the Board, the President or the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

4.9 Secretary. The Secretary shall (a) keep the minutes of the stockholders' meetings and of the Board of Directors, meetings in one or more books provided for the purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal, if any, of the Corporation; (d) keep a register of the mailing address of each stockholders; and (e) have general charge of the stock transfer books of the Corporation; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chairman of the Board, the President or by the Board of Directors,

4.10 Compensation. The compensation of the officers of the Corporation shall be fixed from time to time by the Board of Directors, and no officers shall be prevented from receiving such compensation by reason of the fact that he or she is also a director of the Corporation.

## ARTICLE V

Certificates for Shares and
Their Transfer

5.1 Certificates for Shares. Certificates representing shares of the Corporation shall be in such form as may be determined by the Board of Directors and by the laws of the State of Delaware. Such certificates shall be signed by the Chairman or the Vice-Chairman of the Board of Directors or the President or a Vice-President and by the Secretary or Assistant Secretary or the Treasurer or an Assistant Treasurer, and shall be sealed with the seal of the Corporation, or a facsimile thereof. The signature of such officers upon such certificates may be facsimile if the certificate manually signed on behalf of a transfer agent or registrar for the Corporation. All certificates for shares shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of shares and date of issue, shall be entered on the books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificates shall be issued until the former certificates for a like number of shares shall have been surrendered and cancelled except that, in case of a lost, destroyed or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may proscribe.

5.2 Transfer of Shares. Transfer of shares of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his or her legal representative who shall furnish proper evidence of authority to transfer, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, and on surrender for cancellation of the Certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation.

## ARTICLE VI

Committees

The Board of Directors may, by resolution, designate not less than three (3) of its number to serve on an Executive Committee Or such other committee or committees as the Board may from time to time constitute. The Board of Directors may delegate to any such committee any of the authority of the Directors, however, conferred, other than that of filling vacancies among the Directors or in any committee of the Directors. The specific duties and authority of any such committee or committees shall be stated in the resolution constituting the same.

## ARTICLE VII

Indemnification

7.1 The Corporation shall have power to indemnify any person who was or is a party or is threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer,

employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the beat interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person in fairly and reasonably entitled to indemnify for such expenses which the Court of Chancery or such other court shall deem proper.

7.2 Any indemnification under Sections 7.1 and 7.2 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the directors, officer employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 7.1 and 7.2. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

7.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless is shall ultimately by determined that he or she is entitled to be indemnified by the Corporation as authorized in this Section.

7.4 The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7.5 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Section.

7.6 For purposes of this Article, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had

continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

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

## ARTICLE VIII

Right of First Refusal

8.1 Right of First Refusal. No stockholder who purchases, receives or obtains Common Stock of the Corporation on or after the effective date of these Amended and Restated Bylaws, shall sell, assign, pledge, or in any manner transfer any shares of Common Stock of the Corporation (other than shares of Common Stock issuable upon conversion or exchange of shares of Preferred Stock of the Corporation) or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this Bylaw:

A. If the stockholder desires to sell or otherwise transfer any of his shares of stock, then the stockholder shall first give written notice thereof to the Corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

B. The Corporation may assign its rights hereunder.

C. In the event the Corporation and/or its assignee(s) elect to acquire any of the shares of the transferring stockholder as specified in said transferring stockholder's notice, the Secretary of the Corporation shall so notify the transferring stockholder and settlement thereof shall be made in cash within thirty (30) days after the Secretary of the Corporation receives said transferring stockholder's notice; provided that if the terms of payment set forth in said transferring stockholder's notice were other than cash against delivery, the Corporation and/or its assignee(s) shall pay for said shares on the same terms and conditions set forth in said transferring stockholder's notice.

D. In the event the Corporation and/or its assignees(s) do not elect to acquire all of the shares specified in the transferring stockholder's notice, said transferring stockholder may, within the sixty-day period following the expiration of the option rights granted to the Corporation and/or its assignees(s) herein, transfer the shares specified in said transferring stockholder's notice which were not acquired by the Corporation and/or its assignees(s) as specified in said transferring stockholder's notice. All shares so sold by said transferring stockholder shall continue to be subject to the provisions of this Bylaw in the same manner as before said transfer.

E. Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this Bylaw:

1. A stockholder's transfer of any or all shares held either during such stockholder's lifetime or on death by will or intestacy to such stockholder's immediate family or to any custodian or trustee for the account of such stockholder or such stockholder's immediate family or to any limited partnership of which the shareholder, members of such shareholder's immediate family or any trust for the account of such shareholder or such shareholder's immediate family will be the general of limited partner(s) of such partnership. "Immediate family" as used herein shall mean spouse, lineal descendant, father, mother, brother, or sister of the stockholder making such transfer;
2. A stockholder's bona fide pledge or mortgage of any shares with a commercial lending institution, provided that any subsequent transfer of said shares by said institution shall be conducted in the manner set forth in this Bylaw;
3. A stockholder's transfer of any or all of such stockholder's shares to the Corporation or to any other stockholder of the Corporation;
4. A stockholder's transfer of any or all of such stockholder's shares to a person who, at the time of such transfer, is an officer or director of the Corporation;
5. A corporate stockholder's transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder;
6. A corporate stockholder's transfer of any or all of its shares to any or all of its stockholders; or
7. A transfer by a stockholder which is a limited or general partnership to any or all of its partners or former partners.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this Bylaw, and there shall be no further transfer of such stock except in accord with this Bylaw.

F. The provisions of this Bylaw may be waived with respect to any transfer either by the Corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the Corporation (excluding the votes represented by those shares to be transferred by the transferring stockholder). This Bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the Corporation.

G. Any sale or transfer, or purported sale or transfer, of securities of the Corporation shall be null and void unless the terms, conditions, and provisions of this Bylaw are strictly observed and followed.

H. The foregoing right of first refusal shall terminate on either of the following dates, whichever shall first occur:

1. On June 1, 2011; or
2. Upon the date securities of the Corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

I. The certificates representing shares of stock of the Corporation shall bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION.

## ARTICLE IX

Miscellaneous

9.1 Amendments. The Board of Directors shall have the power and authority to alter, amend or repeal Bylaws of the Corporation at any regular or special meeting at which a quorum is present by the vote of a majority of the entire Board of Directors, subject always to the power of the stockholders under Delaware law to change or repeal such Bylaws.

9.2 Fiscal Year. The Board of Directors shall have the power to fix, and from, time to time change, the fiscal year of the Corporation. Unless otherwise fixed by the Board, the calendar year shall be the fiscal year.

9.3 Dividends. The Board of Directors may, from time to time, declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its Certificate of Incorporation.

9.4 Seal. The Board of Directors may adopt a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation, the state of incorporation and the word “SEAL”.

9.5 Waiver of Notice. Whenever any notice is required to be given under the provisions of these Bylaws, or under the provisions of the Corporation’s Certificate of Incorporation or under the provisions of the corporation laws of the State of Delaware, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

9.6 Inspections of Books. Any stockholder may examine in person or through his or her agent, at any reasonable time and for any proper purpose, the relevant books and records of the Corporation and may make copies thereof. Such inspection may be denied to any stockholder or his or her agent if he refuses to furnish to the Corporation an affidavit that his or her inspection is for a proper purpose, that he or she has not, within a period of five (5) years prior to the date thereof, sold or offered to sell any list of stockholders or holders of voting trust certificates for any corporation, that he or she has not aided any person in procuring any such list for such purpose, and that he or she has not improperly used any information secured through any prior examination of the books and records of any corporation.

**EXHIBIT 4.1**

***EXECUTION COPY***

**ATRICURE, INC.**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

This Amended and Restated Investors' Rights Agreement (this "Agreement") is made as of the 6th day of June, 2002, by and among AtriCure, Inc., a Delaware corporation (the "Company"), and the investors listed on Exhibit A attached hereto ("Investors"). All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Series B Convertible Preferred Stock Purchase Agreement of the same date herewith ("Purchase Agreement").

1. Information Rights.

1.1 Financial Information. So long as an Investor is a Major Investor (as defined in Section 2.1 below), the Company will provide to such Major Investor the following information:

(a) as soon as practicable, but in any event within ninety (90) days (or such shorter period as determined by the Company's Board of Directors) after the end of each fiscal year of the Company, an audited balance sheet of the Company, as at the end of such fiscal year, and audited statements of operations, cash flow and stockholders' equity for such fiscal year. Such year-end financial reports shall be in reasonable detail, shall be prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied and shall set forth in each case in comparative form the figures for the previous year. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by the Company's Board of Directors;

(b) within forty-five (45) days after the end of each fiscal quarter, an unaudited balance sheet of the Company as of the end of such quarterly period, and statements of operations and cash flows for such quarter and for the current fiscal year to date, in reasonable detail and prepared in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes;

(c) within thirty (30) days after the end of each month, an unaudited balance sheet of the Company as of the end of such month, and statements of operations and cash flows for such month and for the current fiscal year to date, in reasonable detail and prepared in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes; and

(d) at least thirty (30) days prior to the beginning of each fiscal year of the Company, an annual budget and operating plans for such fiscal year (and as soon as available, and subsequent revisions thereto).

1.2 Additional Information. So long as an Investor is a Major Investor, the Company will deliver or provide to such Major Investor with reasonable promptness:

(a) management letters from the Company's auditors or accountants;

(b) notices received by the Company concerning defaults under material agreements;

(c) notices, pleadings and any other correspondence concerning material litigation;

(d) profit and loss statements, budgets and initial projections; and

(e) any other information that may be reasonably requested;

provided, however, that, whenever requested, such Major Investor shall sign an agreement reasonably satisfactory to the Company stating that such Major Investor shall hold all such information in confidence.

1.3 Subsidiaries If the Company has any subsidiaries, the obligation of the Company to deliver financial information and operating plans as set forth in this Section 1 shall be construed to mean the consolidated financial statements and operating plans of the Company.

1.4 Books and Records. The Company will maintain books and records of account in which full and correct entries will be made in all material respects of its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books, on a periodic basis, all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

1.5 Inspection Rights. Each Major Investor shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested; provided, however, that the Company shall not be obligated under this Section 1.5 with respect to a Major Investor that is a competitor of the Company or with respect to information which the Company's Board of Directors determines in good faith is confidential and should not, therefore, be disclosed.

1.6 Statutory Rights. The provisions of this Section 1 shall not be in limitation of any rights which any Holder may have under any applicable law with respect to the books and records of the Company or to inspect its properties or to discuss its affairs, finances and accounts.

1.7 Termination of Covenants. The rights set forth in this Section 1 hereof shall terminate and be of no further force or effect upon the closing of a Qualified Public Offering (as

defined in Article IV, Section 2(b)(i) of the Company's Certificate of Incorporation) or on the date the Company otherwise becomes subject to and begins complying with the reporting requirements under Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended, whichever first occurs.

2. Registration Rights.

2.1 Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

(a) An "Affiliate" of a person is a second person directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with that first person.

(b) "Commission" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(c) "Common Stock" shall mean the Company's Common Stock, par value $.0001 per share.

(d) "Holder" shall mean any Investor holding Registrable Securities or securities convertible into Registrable Securities and any person holding such securities to whom the rights under this Section 2 have been transferred in accordance with Section 2.11 hereof.

(e) "Initiating Holders" shall mean any Holder or Holders who in the aggregate hold at least 25% percent of the Registrable Securities.

(f) "Investor" means either an Investor who has signed this Agreement or a Holder.

(g) "Major Investor" means an Investor or a Holder owning with its Affiliates not less than six hundred and fifty thousand (650,000) shares of Registrable Securities (as appropriately adjusted for stock splits and the like). For purposes of this definition, any shares of Registrable Securities held by Partisan Management Group, Inc., The Weldon Foundation, Carol J. Weldon and Karen J. Cassidy shall be aggregated.

(h) "Preferred Stock" means the Series A Preferred Stock and the Series B Preferred Stock.

(i) "Registrable Securities" means (i) the Series A Preferred Stock, (ii) the Series B Preferred Stock, (iii) any Common Stock issuable upon conversion of the Series A Preferred Stock or the Series B Preferred Stock ("Conversion Stock") and/or (iv) any Common Stock of the Company issued or issuable with respect to, or in exchange for or in replacement of, the Conversion Stock or other securities convertible into or exercisable for Series A Preferred Stock or Series B Preferred Stock upon any stock split, stock dividend, recapitalization, or similar event;

provided, however, that shares of Common Stock or other securities shall only be treated as Registrable Securities for the purposes of Sections 2.2, 2.3 and 2.4 hereof (A) if and so long as they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction or (B) prior to the date such securities have been sold in a transaction exempt from the prospectus delivery requirements of the Securities Act so that all transfer restrictions and legends with respect thereto are removed upon the consummation of such sale.

(j) The terms "register," "registered" and "registration" refers to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

(k) "Registration Expenses" shall mean all expenses, except as otherwise stated below, incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, reasonable fees and disbursements of a single counsel for the Holders, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

(l) "Restricted Securities" shall mean the securities of the Company required to bear the legend referring to the Securities Act set forth in the Purchase Agreement.

(m) "Securities Act" shall mean the Securities Act of 1933, as amended, or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

(n) "Selling Expenses" shall mean all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the securities registered by the Holders.

(o) "Series A Preferred Stock" shall mean the Company's Series A Convertible Preferred Stock, par value $.0001 per share.

(p) "Series B Preferred Stock" shall mean the Company's Series B Convertible Preferred Stock, par value $.0001 per share.

2.2 Requested Registration.

(a) Request for Registration. If at any time after the earlier to occur of (x) June 6, 2006 and (y) the date which is one hundred eighty (180) days after the closing of the Company's first registered public offering of securities, the Company shall receive from Initiating Holders a written request (specifying that it is being made pursuant to this Section 2.2(a)) that the Company effect any registration, qualification or compliance with respect to at least twenty percent (20%) of the Registrable Securities then held by such Initiating Holders (or any lesser number of shares if the anticipated aggregate offering price, net of underwriting discounts and commissions, would exceed $10,000,000), the Company will (i) within ten (10) days of the receipt by the

Company of such notice, give written notice of the proposed registration, qualification or compliance to all other Holders and (ii) as soon as practicable (but in no event more than ninety (90) days after receipt by the Company of such notice), use its best efforts to effect such registration, qualification or compliance (including, without limitation, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to take any action to effect any such registration, qualification or compliance pursuant to this Section 2.2(a):

(i) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(ii) During the period starting with the date sixty (60) days prior to the Company's estimated date of filing of, and ending on the date ninety (90) days immediately following the effective date of, any registration statement pertaining to securities of the Company (other than a registration of securities in a Rule 145 of the Securities Act transaction, with respect to an employee benefit plan or with respect to the Company's first registered public offering of its stock), provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective;

(iii) After the Company has effected two (2) registrations pursuant to this Section 2.2(a), and such registrations have been declared or ordered effective; and

(iv) If the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Company's Board of Directors it would be seriously detrimental to the Company or its shareholders for a registration statement to be filed in the near future, then the Company's obligation to use its best efforts to register, qualify or comply under this Section 2.2 shall be deferred for a period not to exceed ninety (90) days from the date of receipt of written request from the Initiating Holders; provided, however, that the Company shall not exercise such right more than once in any twelve-month period.

(b) Underwriting. In the event that a registration pursuant to this Section 2.2 or Section 2.4 hereof is for a registered public offering involving an underwriting, the Initiating Holders shall so advise the Company as part of their request made pursuant to this Section 2.2 or any request pursuant to Section 2.4 hereof, and the Company shall so advise the Holders as part of the notice given pursuant to Section 2.2(a) or 2.4(a) hereof, as applicable. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in the underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by a majority in interest of the Initiating Holders (which managing underwriter shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.2 or Section 2.4 hereof, if the managing underwriter advises the Company in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all Holders thereof in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the registration statement or in such other manner as shall be agreed to by the Company and Holders of a majority of the Registrable Securities proposed to be included in such registration; provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all other securities of the Company are first entirely excluded from the underwriting and registration. No Registrable Securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Holder may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. The Registrable Securities and/or other securities so withdrawn shall also be withdrawn from registration, and such Registrable Securities shall not be transferred in a public distribution prior to ninety (90) days after the effective date of such registration, or such other shorter period of time as the underwriters may require.

2.3 Company Registration.

(a) Notice of Registration. If at any time or from time to time the Company shall determine to register any of its securities, either for its own account or the account of a security holder or holders, other than a registration relating solely to employee benefit plans, the Company will:

(i) promptly give to each Holder written notice thereof and in no event less than twenty (20) days prior to the filing of any statement pertaining to such a registration; and

(ii) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within fifteen (15) days after receipt of such written notice from the Company, by any Holder.

If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 2.3(a) hereof. In such event the right of any Holder to registration pursuant to this Section 2.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by the Company. Notwithstanding any other provision of this Section 2.3, if the managing underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten, the managing underwriter may limit the Registrable Securities and other securities to be distributed through such underwriting. The Company shall so advise all Holders distributing their securities through such underwriting of such limitation and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated first to the Company, and then among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the registration statement. No such limitation shall (i) reduce the securities being offered by the Company for its own account to be included in the registration and underwriting or (ii) reduce the amount of securities of the selling Holders included in the registration below fifteen percent (15%) of the total amount of securities included in such registration, unless such offering is the Company's initial public offering, in which event any or all of the Registrable Securities of the Holders may be excluded. To facilitate the allocation of shares in accordance with the above provisions, the Company may round the number of shares allocated to any Holder or holder to the nearest one hundred (100) shares. If any Holder or holder disapproves of the terms of any such underwriting, such Holder or holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration. For any Holder which is a partnership or corporation, the partners, retired partners and shareholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing person shall be deemed to be a single "Holder," and any *pro rata* reduction with respect to such "Holder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "Holder," as defined in this sentence.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 Registration on Form S-3.

(a) If any Holder or Holders of the Registrable Securities request that the Company file a registration statement on Form S-3 (or any successor form to Form S-3), or any similar short-form registration statement, for a public offering of Registrable Securities owned by such Holder or Holders, the reasonably anticipated aggregate price to the public of which, net of underwriting discounts and commissions, would exceed $500,000 and the Company is a registrant entitled to use Form S-3 (or any successor or similar form) to register the Registrable Securities for such an offering, the Company shall:

(i) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders;

(ii) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within ten (10) days after receipt of such written notice from the Company, by any Holder; and

(iii) use its best efforts to cause such Registrable Securities to be registered on such form for the offering and to cause such Registrable Securities to be qualified in such jurisdictions as the Holder or Holders may reasonably request; provided, however, that the Company shall not be required to effect more than two registrations pursuant to this Section 2.4 in any twelve (12) month period. After the Company's Qualified Public Offering, the Company will use its best efforts to qualify for Form S-3 registration or a similar short-form registration. The provisions of Section 2.2(b) hereof shall be applicable to each registration initiated under this Section 2.4.

(b) Notwithstanding the foregoing, the Company shall not be obligated to take any action pursuant to this Section 2.4: (i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act; (ii) if the Company, within ten (10) days of the receipt of the request of any Holder or Holders pursuant to this Section 2.4, gives notice of its bonafide intention to effect the filing of a registration statement with the Commission within ninety (90) days of receipt of such request (other than with respect to a registration statement relating to an offering solely to officers, directors, employees or consultants of the Company), provided that the Company is actively employing in good faith its reasonable efforts to cause such registration statement to become effective; or (iii) if the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Company's Board of Directors it would be seriously detrimental to the Company or its shareholders for registration statement to be filed at such time, then the Company's obligation to use its best efforts to file a registration statement shall be deferred for a period not to exceed ninety (90) days from the receipt of the request to file such registration by such Holder or Holders; provided, however, that the Company shall not exercise this Section 2.4(b)(iii) right more than once in any twelve-month period.

2.5 Expenses of Registration. All Registration Expenses incurred in connection with registrations pursuant to Sections 2.2, 2.3 and 2.4 hereof shall be borne by the Company; provided, however, that each Holder requesting registration pursuant to Section 2.3 shall bear the cost of its legal counsel incurred in connection with any registrations that are requested after the Company has effected two registrations pursuant to Section 2.3 in which any Holder has participated. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration *pro rata* with the Company and among each other on the basis of the number of shares so registered. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Sections 2.2 and 2.4 hereof if the registration request is subsequently withdrawn at the request of the majority of the Initiating Holders, unless (a) the withdrawal is based upon material adverse information concerning the Company of which the Initiating Holders were not aware at the time of such request, or (b) the withdrawal is made during a deferral by the Company pursuant to Section 2.2(a)(iv) or 2.4(b)(iii) above, or (c) the Holders of a majority of Registrable Securities agree to forfeit their right to one requested registration pursuant to Section 2.2 or Section 2.4 above, as the case may be, in which event such right shall be forfeited by all Holders.

2.6 Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Section 2, the Company will keep each Holder advised in writing as to the initiation of each registration, qualification and compliance and as to the completion thereof. The Company will, as expeditiously as reasonably possible:

(a) Prepare and file with the Commission a registration statement with respect to such securities and use its best efforts to cause such registration statement to become and remain effective for at least ninety (90) days or until the distribution described in the registration statement has been completed;

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act and to use best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of each jurisdiction as shall be reasonably requested by Holders with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as they may reasonably request in order to facilitate the public offering of such securities;

(d) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering;

(e) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and use reasonable efforts to amend or supplement such prospectus in order to remedy such statement or omission;

(f) Use its best efforts to furnish, at the request of a majority of the Holders participating in the registration, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters;

(g) Use its reasonable best efforts to register and qualify the Registrable Securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions unless the Company is already subject to service in such jurisdiction;

(h) Cause the Registrable Securities covered by such registration statement to be listed on each securities exchange or included for trading on any inter-dealer quotation system on which similar securities issued by the Company are then listed or included;

(i) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration; and

(j) Execute and deliver such instruments and take such other actions as the Holders of the Registrable Securities covered by such registration statement may reasonably request in order to facilitate the effectiveness of the registration statement and qualification or compliance under applicable blue sky laws, and the disposition of the shares covered by the registration statement.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, each of its officers, directors, partners and legal counsel, and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification or compliance has been effected pursuant to this Section 2, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), any rule or regulation promulgated under the Securities Act or the Exchange Act or other federal or state law applicable to the Company in connection with any such registration, qualification or compliance, and the Company will pay as incurred to each such Holder, each of its officers, directors, partners and legal counsel, and each person controlling such Holder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission, made in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder, controlling person or underwriter and stated to be specifically for use therein, and further provided that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability of action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld.

(b) To the extent permitted by law, each Holder will, severally but not jointly, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors, officers, and legal counsel, each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other Holder, each of its officers, directors, partners and legal counsel and each person controlling such Holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, such Holders, such directors, officers, persons, underwriters or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue

statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder and stated to be specifically for use therein; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the liability of each Holder under this subsection (b) shall be limited in an amount equal to the net proceeds to each such Holder of Registrable Securities sold as contemplated herein. A Holder will not be required to enter into any agreement or undertaking in connection with any registration under this Section 2 providing for any indemnification or contribution on the part of such Holder greater than the Holder's obligations under this Section 2.8(b).

(c) Each party entitled to indemnification under this Section 2.8 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided, further, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 2.8 unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action and provided, further, that the Indemnifying Party shall not assume the defense for matters as to which there is a conflict of interest or separate and different defenses but shall bear the expense of such defense nevertheless.

(d) If the indemnification provided for in this Section 2.8 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statement(s) or omission(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, however, that in no event shall any contribution by a Holder hereunder exceed the proceeds from the offering received by such Holder.

(e) The obligations of the Company and Holders under this Section 2.8 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this Agreement. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

2.9 Information by Holder. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall reasonably be required to effect the registration of such Holder's Registrable Securities.

2.10 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Securities to the public without registration, after such time as a public market exists for the Common Stock of the Company, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are defined in Rule 144 under the Securities Act, at all times after the effective date that the Company becomes subject to the reporting requirements of the Securities Act or the Exchange Act;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); and

(c) So long as a Holder owns any Restricted Securities, furnish to such Holder upon request (i) a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), (ii) a copy of the most recent annual or quarterly report of the Company and (iii) such other reports and documents of the Company and other information in the possession of or reasonably obtainable by the Company as a Purchaser may reasonably request in availing itself of any rule or regulation of the Commission allowing a Purchaser to sell any such securities without registration.

2.11 Transfer of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder only to a transferee or assignee of Registrable Securities which (a) is a general partner, limited partner, retired partner, member or retired member of the Holder, or (b) is an Affiliate of the Holder, or (c) is the Holder's family member or a trust for the benefit of an individual Holder or his family members, or (d) acquires at least 250,000 shares (as appropriately adjusted for stock splits and the like) of the Registrable Securities; provided, however, that, in the case of clause (d) above, Registrable

Securities held by multiple transferees or assignees of a Holder shall be aggregated for purposes of meeting the 250,000 share threshold if all such transferees or assignees have agreed in writing to allow one (1) representative to make all determinations and to take all actions relating to the Company's registration of such Registrable Securities; provided, further, that, in any such case, the Company be given prior written notice of such transfer and that such transfer may otherwise be effected in accordance with applicable securities laws.

2.12 Market Stand-Off Agreement. Each Holder agrees, in connection with an initial public offering of the Company's securities, (i) not to sell, make short sales of, loan, grant any options for the purchase of, or otherwise dispose of any Registrable Securities (other than those shares included in the registration) without the prior written consent of the Company or the underwriters managing such initial underwritten public offering for a period of one hundred eighty (180) days after the date of such registration, provided that all holders of one percent (1%) or more of the Company's outstanding securities and all officers and directors of the Company who own stock or options to buy stock of the Company also agree to such restrictions and (ii) to execute any agreement reflecting (i) above as may be requested by the underwriters at the time of the public offering.

2.13 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the holders of more than (i) sixty-six and two/thirds percent ($66\ ^{2}/_{3}\%$) in interest of the then issued and outstanding shares of Series A Preferred Stock (including any shares of Common Stock issued upon a conversion thereof) and (ii) a majority in interest of the then issued and outstanding shares of Series B Preferred Stock (including any shares of Common Stock issued upon a conversion thereof), voting as separate classes of Preferred Stock, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are more favorable than the registration rights granted to any Holder hereunder whose registration rights have not terminated pursuant to Section 2.14 below, unless such Holder shall waive this restriction in writing.

2.14 Termination of Registration Rights. The right of any Holder to request registration or inclusion in any registration pursuant to this Agreement shall terminate on the fifth ($5^{th}$) year anniversary of the consummation by the Company of a Qualified Public Offering; provided, however, if the Company has not been subject to, or has not fully complied with, the provisions of the Exchange Act continuously for the twelve (12) months preceding said five-year anniversary, then the registration rights granted under this Section 2 shall not terminate until the end of the next succeeding twelve (12) month period during which the Company has been continuously subject to, and has complied with, the provisions of the Exchange Act; provided further, however, that the right of any Holder of Registrable Securities to request such registration shall terminate on the date when all of such Holder's shares may immediately be sold under Rule 144.

3. Major Investor's Rights of Participation.

3.1 Right to Participate in New Issuances.

(a) The Company hereby grants, on the terms set forth in this Section 3, to each Major Investor, the right of first refusal to purchase all or any part of such Major Investor's *pro rata* share of the New Securities (as defined in Section 3.1(a) hereof) which the Company may, from time to time, propose to sell and issue. Each Major Investor may purchase said New Securities on the same terms and at the same price at which the Company proposes to sell the New Securities. The *pro rata* share of each Major Investor, for purposes of this right of participation, is the ratio of the total number of shares of Registrable Securities held by such Major Investor, to the total number of shares of Registrable Securities held by all Major Investors immediately prior to the issuance of the New Securities. A Major Investor shall be entitled to apportion its right of first refusal among itself and its Affiliates, partners, retired partners, members, retired members and stockholders in such proportions as it deems appropriate, provided that in every case, such Major Investor itself initially exercises its right of first refusal hereunder.

(b) "New Securities" shall mean any capital stock of the Company, whether now authorized or not, and any rights, options or warrants to purchase said capital stock, and securities of any type whatsoever that are, or may become, convertible into said capital stock; provided, however, that "New Securities" does not include: (i) shares of capital stock issued pursuant to any rights or agreements outstanding as of the date of this Agreement, or pursuant to any options or warrants outstanding as of the date of this Agreement; (ii) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company; (iii) shares of Common Stock issued upon conversion of any shares of Series A Preferred Stock or Series B Preferred Stock; (iv) securities offered pursuant to a registration statement filed under the Securities Act; (v) securities issued for consideration other than cash pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization; (vi) 4,500,000 shares of Common Stock reserved in connection with options issued or to be issued under the Company's 2001 Stock Option Plan, as amended or restated, to officers, directors, employees, advisors or consultants of the Company, which number of reserved shares may be increased by the approval of at least a majority of the Company's Board of Directors (provided that such majority includes all directors elected exclusively by the holders of Preferred Stock (the "Preferred Directors")) (notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be New Securities); (vii) any securities issued or issuable to financial institutions, equipment lessors or other commercial lenders in connection with commercial credit agreements, equipment financings or other similar financings, which are approved by at least a majority of the Company's Board of Directors (provided that such majority includes all Preferred Directors) (notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be New Securities); and (viii) any securities issued or issuable pursuant to agreements to license technology and/or provide sponsored research, which are approved by at least a majority of the Company's Board of Directors (provided that such majority includes all Preferred Directors) (notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be New Securities).

(c) In the event the Company proposes to undertake an issuance of New Securities, it shall give to the Major Investors written notice (the "Notice") of its intention, identifying the proposed issues and describing the New Securities, the price, the terms upon which the Company proposes to issue the same. Each Major Investor shall have fifteen (15) days from the date of receipt of the Notice to agree to purchase any or all of its *pro rata* share of the New Securities for the price and upon the terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased. If not all of the eligible Major Investors elect to purchase their *pro rata* share of the New Securities, then the Company shall promptly notify in writing those eligible Major Investors who have elected to purchase their *pro rata* share of such New Securities and shall offer to such Major Investors the right to acquire such unsubscribed shares. Each of such Major Investors shall have five (5) days after receipt of such notice to notify the Company of its election to purchase all or a portion thereof of the unsubscribed shares. The Major Investors electing to purchase shares of the New Securities may condition their agreement to purchase such shares upon the consummation of substantially the entire issuance described by the Company in its notice.

(d) In the event the Major Investors fail to exercise in full the right of participation within said twenty (20) day period, the Company shall have sixty (60) days thereafter to sell the New Securities respecting which the rights of the Major Investors were not exercised, at a price and upon general terms no more favorable to the purchasers thereof than specified in the Notice. In the event the Company has not sold the New Securities within said sixty (60) day period, the Company shall not thereafter issue or sell any New Securities without first offering such securities to the Major Investors in the manner provided above.

3.2 Assignment of Company's Right of First Refusal. If at any time the Company determines not to exercise fully a right of first refusal it has to repurchase any of its securities, it shall promptly (and in every case at least fifteen (15) days prior to the expiration of those rights) assign the unexercised rights to the Major Investors and give them written notice of such assignment (the "Assignment Notice"). The Assignment Notice shall identify the person (the "Transferor") proposing to transfer the securities as to which the right of first refusal applies, the securities proposed to be transferred, and the price, terms and conditions of the proposed transfer.

(a) Each Major Investor may exercise the right of first refusal assigned by the Company so as to purchase its share of all such securities described in the Assignment Notice. A Major Investor may exercise its assigned right of first refusal by giving written notice (the "RFR Notice") to the Transferor, with a copy to the Company, within ten (10) days after the Assignment Notice, specifying the maximum number of shares such Major Investor wishes to buy under the assigned right. Each Major Investor who so elects to buy part of the securities proposed to be transferred shall hereinafter be referred to as a "Buyer." The securities shall be allocated among all Buyers pro rata up to the maximum amount specified in each RFR Notice. Each Buyer's pro rata share shall be equal to the ratio of (a) the number of shares of the Company's Common Stock

(including all shares of Common Stock issued or issuable upon conversion of the Shares) of which such Buyer is deemed to be a holder to (b) the total number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares or upon the exercise of any outstanding warrants or options) held by all Buyers.

(b) If the Company's applicable right of first refusal to repurchase its securities provides that it can be exercised only against all, and not some lesser portion of, the securities the Transferor proposes to transfer, then if after application of Section 3.2(a) above the Company and the Buyers have not collectively elected to purchase all of such securities proposed to be transferred by the Transferor, the Transferor may consummate the proposed transfer as permitted by his agreement with the Company granting the Company its right of first refusal, subject to any other restrictions on transfer of such securities. However, if the Company's applicable right of first refusal permits it to be exercised against less than all of the securities the Transferor proposes to transfer, then the Transferor may consummate the proposed transfer only to the extent there are shares of the securities as to which neither the Company, the Buyers, nor any other assignee of the Company has exercised a right of first refusal, and the transfer must be as permitted by his agreement with the Company granting the Company its right of first refusal and will be subject to any other restrictions on transfer of such securities.

(c) The exclusions established by Section 3.1(a) above shall not be applicable to the rights established by this Section 3.2.

3.3 Assignment of Company's Right of Repurchase. If at any time the Company determines not to exercise fully a right it has to repurchase any of its securities, it shall promptly (and in every case at least fifteen (15) days prior to the expiration of those rights) assign the unexercised rights to the Major Investors and give them written notice of such assignment (the "Assignment Notice"). The Assignment Notice shall identify the person (the "Security Holder") holding the securities as to which the right of repurchase exists, a description of the securities, and the price, terms and conditions of the repurchase.

(a) Each Major Investor may exercise the right of repurchase assigned by the Company so as to purchase its share of all such securities described in the Assignment Notice. A Major Investor may exercise its assigned right of repurchase by giving written notice (the "Repurchase Notice") to the Security Holder and the Company within ten (10) days after the Assignment Notice, specifying the maximum number of shares such Major Investor wishes to buy under the assigned right. Each Major Investor who so elects to buy part of the securities subject to repurchase shall hereinafter be referred to as a "Buyer." The securities shall be allocated among all Buyers pro rata up to the maximum amount specified in each Repurchase Notice. Each Buyer's pro rata share shall be equal to the ratio of (a) the number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock) of which such Buyer is deemed to be a holder to (b) the total number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock or upon the exercise of any outstanding warrants or options) held by all Buyers.

(b) The exclusions established by Section 3.1(a) above shall not be applicable to the rights established by this Section 3.3.

3.4 Amendment and Waiver of Rights of Participation. The rights of participation established by this Section 3 may be amended or any provision waived only with the written consent of (i) Major Investors holding at least sixty-six and two-thirds percent (66 2/3%) of the Series A Preferred Stock held by all Major Investors; and (ii) Major Investors holding at least a majority in interest of the Series B Preferred Stock held by all Major Investors. Any amendment or waiver effected in accordance with this Section 3.4 shall be binding upon each Major Investor and the Company. By acceptance of any benefits under this Agreement, all Major Investors hereby agree to be bound by the provisions of this Agreement as the same may be hereafter amended or waived pursuant to this Section 3.4.

3.5 Termination of Rights of Participation. The rights of participation of each Major Investor granted under this Section 3 shall terminate and be of no further force or effect upon the closing of a Qualified Public Offering (as defined in Article IV, Section 2(b)(i) of the Company's Certificate of Incorporation).

3.6 Transfer of Right of Participation. The rights of participation of each Major Investor under this Section 3 may be transferred to the same parties, subject to the same restrictions on transfers, as set forth for registration rights in Section 2.11 above.

3.7 To the extent the Company has failed to comply in any respect with the provisions of Section 3 of the Investors' Rights Agreement dated as of May 25, 2001 (which is amended and restated by this Agreement) in connection with the offering and issuance of the Series B Preferred Stock, each Holder hereby irrevocably consents to, and waives any claim arising from, such failure to comply.

4. Other Warranties and Covenants.

4.1 Stock Options. As of the date hereof, the Company represents and warrants that (x) it has adopted the Plan, whereby officers, directors, employees, advisors and consultants of the Company are eligible to receive options (collectively, "Options") to purchase shares of the Common Stock and (y) 4,500,000 shares of Common Stock have been reserved under the Plan upon the issuance of Options. The Company covenants and agrees that, unless the Company's Board of Directors unanimously approves otherwise, all Options issued pursuant to the Plan after the date of this Agreement shall vest as follows: twenty-five percent (25%) of the total grant will vest after twelve (12) months of employment or engagement, and the remainder of the total grant will vest in equal, monthly installments over the thirty-six (36) months thereafter.

4.2 Confidentiality of Records. Each Investor agrees to use, and to use its commercially reasonable efforts to insure that its authorized representatives use, the same degree of care as such Investor uses to protect its own confidential information to keep confidential any information furnished to it which the Company identifies as being confidential or proprietary (so long as such information is not in the public domain), except that such Investor may disclose such

proprietary or confidential information to any partner, subsidiary or parent of such Investor for the purpose of evaluating its investment in the Company as long as such partner, subsidiary or parent is advised of the confidentiality provisions of this Section 4.2.

4.3 Reservation of Common Stock. The Company covenants and agrees that at all times it will reserve and keep available, solely for issuance and delivery upon the conversion of the Series A Preferred Stock and Series B Preferred Stock into Conversion Stock, all Common Stock issuable from time to time upon such conversion. The Company further covenants and agrees that it shall comply with all applicable federal and state securities laws in connection with the conversion of any Series A Preferred Stock or Series B Preferred Stock into Conversion Stock.

4.4 Proprietary Information Agreements. The Company agrees to use its best efforts to require, as a condition to employment with the Company, that each and every key employee and consultant execute (i) a proprietary information agreement and (ii) a confidentiality and non-disclosure agreement in forms reasonably acceptable to the Company and the Investors.

4.5 Company's Right of First Refusal Under Stock Option Plan. The Company covenants and agrees that, on and after the date hereof, the Plan shall contain a provision explicitly providing that the Company shall have the right to assign its rights of first refusal upon the sale or other transfer of shares underlying a stock option.

4.6 Company's Right of Repurchase. The Company covenants and agrees that, on and after the date hereof, the Company's form of Early Exercise Stock Purchase Agreement shall contain a provision explicitly giving the Company the right to assign its Purchase Option (as defined and in accordance with the Early Exercise Stock Purchase Agreement).

4.7 Reimbursement of Director's Expenses. The Company shall promptly reimburse each Director all reasonable expenses incurred in connection with attending any meetings of the Board of Directors or performing any duties as a Director or otherwise acting for the benefit of the Company.

4.8 Director's Insurance. The Company will obtain and maintain directors' and officers' liability insurance with appropriate coverage as may be determined by a majority of the non-employee directors of the Company when those same directors determine it is appropriate, but in any case prior to the first public offering of the Company securities.

4.9 Board Approval of Stock Issuances. The Company will not, without the approval of the Board of Directors, issue any of its capital stock or grant any option, warrant or other rights to subscribe for, purchase or acquire any of its capital stock.

4.10 Repurchase. If the Company issues any shares of its Common Stock to any director, officer, employee, consultant or other service provider in connection with services provided or to be provided to the Company, the stock shall be issued with a repurchase option that shall provide that upon such person's termination of employment or service with the Company, with or without cause, the Company or its assignee (to the extent permissible under applicable securities

laws and other laws) shall have the option to purchase at cost any unvested shares of stock held by such person. The parties acknowledge that, notwithstanding the foregoing, the Company has entered into a Stock Repurchase Agreement with Michael D. Hooven and Susan Spies whereby the Company, under certain circumstances, has the option to repurchase its shares at fair market value, as set forth in such agreement. The vesting of such shares of stock shall be as set forth in Section 4.1 above. Such stock shall also be issued pursuant to an agreement prohibiting the transfer of any unvested shares. All stock options and other stock equivalents issued after the date of this Agreement to directors, officers, employees, consultants or other service providers shall provide that any such options or other rights will be subject to such vesting provisions and prohibition on transfer of unvested shares.

4.11 First Refusal. If the Company issues any shares of its Common Stock to any director, officer, employee, consultant or other service provider in connection with services provided or to be provided to the Company, the stock shall be issued subject to a standard right of first refusal to the Company (and its assignees) on any sale or other disposition. Commencing on the date hereof, all agreements relating to the issuance of stock options and other stock equivalents issued after the date of this Agreement to directors, officers, employees, consultants or other service providers shall provide that any stock issued upon exercise of such options or other rights will be subject to such a right of first refusal. The Company shall not terminate any right of first refusal currently in effect affecting capital stock previously issued to directors, officers, employees, consultants, or other service providers.

4.12 Key Person Life Insurance. The Company has obtained as of the date hereof, from financially sound and reputable insurers, term life insurance on the life of Mike Hooven in the amount of $2,000,000.

4.13 Termination of Certain Covenants. The covenants and agreements set forth in this Section 4 (other than Sections 4.2 and 4.3, which shall remain in effect) shall terminate and be of no further force or effect upon the earlier to occur of (i) the closing of a Qualified Public Offering (as defined in Article IV, Section 2(b)(i) of the Company's Certificate of Incorporation) and (ii) when less than one million (1,000,000) shares of the Preferred Stock (exclusive of any shares of Conversion Stock) are issued and outstanding.

5. Miscellaneous.

5.1 Entire Agreement. This Agreement, the Purchase Agreement and the other documents delivered pursuant thereto, constitute the full and entire agreement among the Company and the Investors with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, written and oral, with respect to the subject matter hereof and thereof (including, without limitation, the Investors' Rights Agreement dated May 25, 2001, which this Agreement amends and restates).

5.2 Waivers and Amendments. With the written consent of: (i) the Company; (ii) the holders of more than sixty-six and two/thirds percent (66 2/3%) in interest of the then issued and outstanding shares of Series A Preferred Stock (including any shares of Common Stock issued upon

a conversion thereof); and (iii) the holders of more than a majority in interest of the then issued and outstanding shares of Series B Preferred Stock (including any shares of Common Stock issued upon a conversion thereof) (voting as separate classes of Preferred Stock), the obligations of the Company and the rights of the Holders under this Agreement may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely), and with the same consent, the Company, when authorized by resolution of its Board of Directors, may amend this Agreement or enter into a supplementary agreement for the purpose of adding any provisions of this Agreement; provided, however, that no amendment of this Agreement shall materially and adversely affect the rights of a Holder in a manner that discriminates against such Holder vis-a-vis other Holders without such Holder's written consent; provided further, however, that no consent or amendment shall be necessary to add Investors to this Agreement in connection with their purchase of Series B Preferred Stock from the Company. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by a signed statement in writing. Any amendment, waiver or supplementary agreement effected in accordance with this Section shall be binding upon each Holder of any Registrable Securities then outstanding, each future Holder of all such Registrable Securities and the Company.

5.3 Notices. All notices and other communications required or permitted hereunder shall be in writing and, except as otherwise noted herein, shall be deemed effectively given (i) upon personal delivery, (ii) upon delivery by an internationally recognized courier (such as Fedex or DHL), (iii) when sent by confirmed telex or facsimile, if sent during normal business hours of the recipient; if not sent during normal business hours of the recipient, then on the next business day, or (iv) five (5) days after having been sent by registered or certified mail, postage prepaid; addressed: (a) if to the Company, to it at 6033 Schumacher Park Drive, West Chester, Ohio 45069, Attention: President (or at such other address as the Company shall have furnished to the Stockholders in writing), and (b) if to a Holder, to such Holder at the latest address of such Holder set forth on the Company's records.

5.4 Descriptive Headings and Construction. The descriptive headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions hereof. A reference herein to any Section shall be deemed to include a reference to every subsection thereof. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as to the identity of the parties hereto may require.

5.5 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of New York as applied to agreements among New York residents, made and to be performed entirely within the State of New York.

5.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

5.7 Expenses. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

5.8 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall benefit and bind the successors, assigns, heirs, executors and administrators of the parties to this Agreement and shall inure to the benefit of and be enforceable by each person who shall be a Holder of Registrable Securities from time to time; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends or any redemption price.

5.9 Severability. If any provisions of this Agreement is held to be unenforceable under applicable law, it shall be interpreted, to the extent possible, to enhance its enforceability in order to achieve the intent of the parties to this Agreement. But if no feasible construction would save the provision, the parties agree to renegotiate such provision in good faith. In the event the parties cannot reach a mutually agreeable and enforceable replacement for such provision, its invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; rather this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. The invalidity of any provision of this Agreement as applied to certain circumstances shall not affect the validity or enforceability of such provision as applied to other circumstances or any other provisions of this Agreement.

5.10 Stock Splits. All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, split, combination or other recapitalization of shares by the Company occurring after the date of this Agreement.

5.11 Survival. The representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

5.12 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any Holder's part of any breach, default or noncompliance under this Agreement or any waiver on such Holder's part of any

provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

5.13 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of the Series B Preferred Stock after the date hereof, any purchaser of such shares may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor" hereunder.

5.14 Further Assurances. Each of the parties hereto shall execute and deliver such instruments and take such other actions as the other parties may reasonably request in order to carry out the intent of this Agreement.

5.15 Aggregation of Stock. All securities held or acquired by Affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

5.16 Rights of Holders. Each Holder shall have the absolute right to exercise or refrain from exercising any right or rights that such Holder may have by reason of this Agreement including without limitation, the right to consent to the wavier of any obligation of the Company and to enter into an agreement with the Company for the purpose of modifying this Agreement. Each such Holder shall not incur any liability to any other Holder with respect to exercising or refraining from exercising any such right or rights.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, this Amended and Restated Investors' Rights Agreement has been duly executed on the day and year first set forth above.

**"COMPANY"**

ATRICURE, INC.

By: /s/ Michael D. Hooven

Michael D. Hooven
President

**"INVESTORS"**

U.S. VENTURE PARTNERS VIII, L.P.
USVP VIII AFFILIATES FUND, L.P.
USVP ENTREPRENEUR PARTNERS VIII-A L.P.
USVP ENTREPRENEUR PARTNERS VIII-B L.P.
By: Presidio Management Group VIII, L.L.C.,
The General Partner of Each

By: /s/ Michael P. Maher

Michael P. Maher
Attorney-In-Fact

CHARTER VENTURES IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: _____

A. Barr Dolan
Managing Member

CHARTER ENTREPRENEURS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: _____

A. Barr Dolan
Managing Member

CHARTER ADVISORS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: _____

A. Barr Dolan
Managing Member

**"INVESTORS"**

U.S. VENTURE PARTNERS VIII, L.P.
USVP VIII AFFILIATES, L.P.
USVP ENTREPRENEUR PARTNERS VIII-A, L.P.
USVP ENTREPRENEUR PARTNERS VIII-B, L.P.
By: Presidio Management Group VIII, L.L.C.,
The General Partner of Each

By: _____

Michael P. Maher
Attorney-in-Fact

CHARTER VENTURES IV, L.P.
By: Charter Ventures IV Partners, LLC.,
Its: General Partner

By: /s/ A. Barr Dolan

A. Barr Dolan
Managing Member

CHARTER ENTREPRENEURS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: /s/ A. Barr Dolan

A. Barr Dolan
Managing Member

CHARTER ADVISORS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC.,
Its: General Partner

By: /s/ A. Barr Dolan

A. Barr Dolan
Managing Member

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: /s/ Karen J. Cassidy

Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: _____

Name: Norman R. Weldon
Title: President

**INVESTORS (CONT.):**

_____

UTAKO K. HUDSON

_____

CAROL J. WELDON

_____

FRANK M. FISCHER

/s/ Karen J. Cassidy

_____

KAREN J. CASSIDY

_____

DONALD C. HARRISON, M.D.

_____

LOWELL S. LIFSCHULTZ

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: _____

Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: /s/ Norman R. Weldon

Name: Norman R. Weldon
Title: President

**INVESTORS (CONT.):**

_____

Utako K. Hudson

/s/ Carol J. Weldon

Carol J. Weldon

_____

Frank M. Fischer

_____

Karen J. Cassidy

_____

Donald C. Harrison, M.D.

_____

Lowell S. Lifschultz

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: _____

Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: _____

Name: Norman R. Weldon
Title: President

**INVESTORS (CONT.):**

/s/ Utako K. Hudson

UTAKO K. HUDSON

CAROL J. WELDON

FRANK M. FISCHER

KAREN J. CASSIDY

DONALD C. HARRISON, M.D.

LOWELL S. LIFSCHULTZ

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: _____

Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: _____

Name: Norman R. Weldon
Title: President

**INVESTORS (CONT.):**

_____

UTAKO K. HUDSON

_____

CAROL J. WELDON

/s/ Frank M. Fischer

_____

FRANK M. FISCHER

_____

KAREN J. CASSIDY

_____

DONALD C. HARRISON, M.D.

_____

LOWELL S. LIFSCHULTZ

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: _____

Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: _____

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Title: President

**INVESTORS (CONT.):**

_____

UTAKO K. HUDSON

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CAROL J. WELDON

_____

FRANK M. FISCHER

_____

KAREN J. CASSIDY

/s/ Donald C. Harrison

_____

DONALD C. HARRISON, M.D.

_____

LOWELL S. LIFSCHULTZ

**Investors (cont.):**

PARTISAN MANAGEMENT GROUP, INC.

By: _____

Name: Karen J. Cassidy
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THE WELDON FOUNDATION, INC.

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**INVESTORS (CONT.):**

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UTAKO K. HUDSON

_____

CAROL J. WELDON

_____

FRANK M. FISCHER

_____

KAREN J. CASSIDY

_____

DONALD C. HARRISON, M.D.

/s/ Lowell S. Lifschultz

_____

LOWELL S. LIFSCHULTZ

**Investors (cont.):**

/s/ C.L. Mazzola

CHRISTIAN L. MAZZOLA, AS TRUSTEE
FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

RANDALL WOLF. M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

CHRISTIAN L. MAZZOLA, AS TRUSTEE
FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

/s/ Richard J. D'Augustine

RICHARD J. D'AUGUSTINE

/s/ Merida A. D'Augustine

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

CHRISTIAN L. MAZZOLA, AS TRUSTEE
FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

/s/ Michael D. Hooven

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

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STERNSTEIN, HUSBAND AND WIFE

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RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

/s/ Karen P. Robards

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

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FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

/s/ Raymond W. Ogle

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

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FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

/s/ William P. Santamore

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

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FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

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MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

/s/ Stewart H. Greenfield

STEWART H. GREENFIELD

ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

CHRISTIAN L. MAZZOLA, AS TRUSTEE
FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

/s/ Robert A. Kline

ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**Investors (cont.):**

CHRISTIAN L. MAZZOLA, AS TRUSTEE
FOR THE CHRISTIAN L. MAZZOLA
REVOCABLE TRUST DATED JULY 29, 1993

RICHARD J. D'AUGUSTINE

MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, PH.D.

STEWART H. GREENFIELD

ROBERT A. KLINE

/s/ Randall Wolf /s/ Amy Sternstein

RANDALL WOLF, M.D. AND AMY
STERNSTEIN, HUSBAND AND WIFE

**INVESTORS (CONT.):**

NEW ENGLAND PARTNERS CAPITAL, L.P.
By: NEP Capital, LLP
Its: General Partner

By: /s/ John Rousseau, Jr

Name: John Rousseau, Jr.
Title: President

FOUNDATION MEDICAL PARTNERS, L.P.
By: Foundation Medical Managers, LLC

By: _____

Lee R.Wrubel, M.D.
Managing Member

GREENFIELD FAMILY L.P.
By: Stewart H. Greenfield,
Its: General Partner

By: _____

Name: Stewart H. Greenfield

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC.
Its: General Partner

By: _____

Name: Richard M. Johnston
Title: Managing Member

**INVESTORS (CONT.):**

NEW ENGLAND PARTNERS CAPITAL, L.P.
By: NEP Capital, LLP
Its: General Partner

By: _____

Name:
Title:

FOUNDATION MEDICAL PARTNERS, L.P.
By: Foundation Medical Managers, LLC

By: /s/ Lee R. Wrubel

Lee R.Wrubel, M.D.
Managing Member

GREENFIELD FAMILY L.P.
By: Stewart H. Greenfield,
Its: General Partner

By: _____

Name: Stewart H. Greenfield

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC.
Its: General Partner

By: _____

Name: Richard M. Johnston
Title: Managing Member

**INVESTORS (CONT.):**

NEW ENGLAND PARTNERS CAPITAL, L.P.
By: NEP Capital, LLP
Its: General Partner

By: _____

Name:
Title:

FOUNDATION MEDICAL PARTNERS, L.P.
By: Foundation Medical Managers, LLC

By: _____

Lee R.Wrubel, M.D.
Managing Member

GREENFIELD FAMILY L.P.
By: Stewart H. Greenfield,
Its: General Partner

By: /s/ Stewart H. Greenfield

Name: Stewart H. Greenfield

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC.
Its General Partner

By: _____

Name: Richard M. Johnston
Title: Managing Member

**INVESTORS (CONT.):**

NEW ENGLAND PARTNERS CAPITAL, L.P.
By: NEP Capital, LLP
Its: General Partner

By: _____

Name:
Title:

FOUNDATION MEDICAL PARTNERS, L.P.
By: Foundation Medical Managers, LLC

By: _____

Lee R.Wrubel, M.D.
Managing Member

GREENFIELD FAMILY L.P.
By: Stewart H. Greenfield,
Its: General Partner

By: _____

Name: Stewart H. Greenfield

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC.
Its: General Partner

By: /s/ Richard M. Johnston

Name: Richard M. Johnston
Title: Managing Member

**INVESTORS (CONT.):**

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

/s/ Neal Triplett

Neal Triplett, Assistant Director

By: /s/ David R. Shumate

Name: David R. Shumate
Title: Authorized Agent

ROGER STERN

**INVESTORS (CONT.):**

CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC.
Its: General Partner

By: _____

Name: Richard M. Johnston
Title: Managing Member

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

By: _____

Name: David R. Shumate
Title: Authorized Agent

/s/ Roger Stern

ROGER STERN

**INVESTORS (CONT.):**

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

By: _____

Name: David R. Shumate
Title: Authorized Agent

_____

ROGER STERN

O STREET CORPORATION

By: /s/ Curtin Winsor

Name: Curtin Winsor
Title: President

**INVESTORS (CONT.):**

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

By: _____

Name: David R. Shumate
Title: Authorized Agent

_____

ROGER STERN

O STREET CORPORATION

By: _____

Name: Curtin Winsor
Title: President

/s/ Elizabeth H. Lifschultz

ELIZABETH H. LIFSCHULTZ

**EXHIBIT A**

SCHEDULE OF INVESTORS

U.S. Venture Partners VIII, L.P.
USVP VIII Affiliates Fund, L.P.
USVP Entrepreneur Partners VIII-A L.P.
USVP Entrepreneur Partners VIII-B L.P.
Charter Ventures IV, L.P.
Charter Entrepreneurs Fund IV, L.P.
Charter Advisors Fund IV, L.P.
Partisan Management Group, Inc.
The Weldon Foundation, Inc.
Utako K. Hudson
Carol J. Weldon
Frank M. Fischer
Karen J. Cassidy
Donald C. Harrison, M.D.
Lowell S. Lifschultz
The Christian L. Mazzola Revocable Trust Dated July 29, 1993
Richard J. D'Augustine
Merida A. D'Augustine
Michael D. Hooven
Karen P. Robards
Raymond W. Ogle
William P. Santamore, Ph.D.
Stewart H. Greenfield
Robert A. Kline
Randall Wolf, M.D. and Amy Sternstein
New England Partners Capital, L.P.
Foundation Medical Partners, L.P.
Greenfield Family L.P.
Camden Partners Strategic Fund II A, L.P.
Camden Partners Strategic Fund II B, L.P.
Duke University Special Ventures Fund, Inc.
Roger Stern
O Street Corporation
Elizabeth H. Lifschultz

**EXHIBIT 4.1.1**

**ATRICURE, INC.**

**AMENDMENT NO. 1 TO**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**THIS AMENDMENT NO. 1** is made as of March 8, 2005, between **ATRICURE**, Inc., a Delaware corporation (the *"Company")*, and the Investors set forth on the signature pages hereto.

The [Company and the Investors] are parties to that certain [Amended and Restated Investors' Rights Agreement], dated as of June 6, 2002 (the "*Investors' Agreement*"). In connection with a working capital credit facility with Lighthouse Capital Partners V, L.P. ("*Lighthouse*"), the Company will issue a warrant to Lighthouse (the " *Warrant*") to acquire shares of the Company's Common Stock (the "*Common Stock*").

As a condition to the financing, the Company has agreed to grant Lighthouse registration rights with respect to the shares of the Company's Common Stock, and the Investors desire to amend the Investors' Agreement to include Lighthouse thereunder.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1.** The Company and the Investors hereby amend the Investors' Agreement to include Lighthouse as a "Holder" and an "Investor" thereunder and to include the Common Stock issuable upon exercise of the Warrant as "Registrable Securities" thereunder.

**2.** The definitions of "Holder", "Investor" and "Registrable Securities" set forth in **Section 2.1** of the Investors' Agreement shall be amended in their entirety as set forth below:

**(d)** "Holder" shall mean any Investor holding Registrable Securities or securities convertible into Registrable Securities and any person holding such securities to whom the rights under this Section 2 have been transferred in accordance with Section 2.11 hereof, and shall include, without limitation, Lighthouse Capital Partners V, L.P. ("Lighthouse").

**(f)** "Investor" means either an Investor who has signed this Agreement or a Holder and shall include, without limitation, Lighthouse Capital Partners V, L.P. ("Lighthouse").

**(i)** "Registrable Securities" means (i) the Series A Preferred Stock, (ii) the Series B Preferred Stock, (iii) any Common Stock issuable upon conversion of the Series A Preferred Stock or the Series B Preferred Stock ("Conversion Stock"), (iv) any Common Stock of the Company issued or issuable with respect to, or in exchange for or in replacement of, the Conversion Stock or other securities convertible into or exercisable for Series A Preferred Stock or Series B Preferred Sock upon any stock split, stock dividend, recapitalization, or similar event, and (v) all shares of Common Stock of the Company now or hereafter held by Lighthouse Capital Partners V, L.P. ("Lighthouse"), including, without limitation, the shares of Common Stock issued or issuable upon exercise of the warrants to purchase Common Stock held by Lighthouse; provided, however, that shares of Common Stock or other securities shall only be treated as Registrable Securities for the purposes of Sections 2.2, 2.3 and 2.4 hereof (A) if and so long as they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction or (B) prior to the date such securities have been sold in a transaction exempt from the prospectus delivery requirements of the Securities Act so that all transfer restrictions and legends with respect thereto are removed upon consummation of such sale.

**3.** The following new definition is added to **Section 2.1** of the Investors Agreement:

**(q)** "*Lighthouse*" means Lighthouse Capital Partners V, L. P.

**4.** Each Major Investor,, by executing this Amendment No. 1, hereby agrees to waive its right of first refusal (and any related or corresponding notice requirement) contained in **Section 3** of the Investors' Agreement to purchase any of the Common Stock, or any warrants to purchase Common Stock, issued or to be issued to Lighthouse pursuant to the Warrant, or any Common Stock in connection with the issuance of Common Stock to Lighthouse pursuant to the Warrant.

**5.** For purposes of the Investors' Agreement, Lighthouse and any other holder of the Warrant and the Common Stock issuable upon exercise thereof shall be deemed to be the record holder or holders of the Registrable Securities issuable directly or indirectly upon exercise and conversion thereof.

**6.** All notices and other communications under the Investors' Agreement shall be made to Lighthouse at the address specified below and thereafter at such other address, notice of which is given in accordance with Section 5.3 of the Investors' Agreement:

Lighthouse Capital Partners V, L.P.
500 Drakcs Landing Road
Greenbrae, California 94904-3011
Attn: Contract Administration
Phone: (415)464-5900
Fax: (415) 925-3387

**7.** The Investors' Agreement as modified herein shall remain in full force and effect as so modified.

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

**ATRICURE, INC.**

By: /s/ David Drachman

Name: David Drachman
Title: President

**INVESTORS:**

**See attached pages**.

**Agreed and Accepted:**

**LIGHTHOUSE CAPITAL PARTNERS V, L.P.**

By: **LIGHTHOUSE MANAGEMENT PARTNERS V, L.L.C.**,
its general partner

By: /s/ Thomas Conneely

Name: Thomas Conneely
Title: Vice President

**INVESTOR:**

Foundation Medical Managers, LLC

By: /s/ Lee Wrubel

Name: Lee Wrubel
Title: Managing Member

**INVESTOR:**

CHARTER ADVISORS FUND IV, L.P.

By: /s/ A. Barr Dolan

Name: A. BARR DOLAN
Title: MANAGING MEMBER OF CHARTER VENTURES IV PARTNERS, LLC, THE GENERAL PARTNER.

**INVESTOR:**

CHARTER ENTREPRENEURS FUND IV, L.P.

By: /s/ A. Barr Dolan

Name: A. BARR DOLAN
Title: MANAGING MEMBER OF CHARTER VENTURES IV PARTNERS, LLC,
THE GENERAL PARTNER

**INVESTOR:**

CLS I - IV, LLC

By: /s/ A. Barr Dolan

Name: A. BARR DOLAN
Title: MANAGER

**INVESTOR:**

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.

By: CAMDEN PARTNERS STRATEGIC II, LLC

Name: Richard M Johnston
Title: MANAGING MEMBER
RICHARD M JOHNSTON 3/1/05

**INVESTOR:**

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.

By: CAMDEN PARTNERS STRATEGIC II, LLC

Name: RICHARD M JOHNSTON
Title: MANAGING MEMBER
Richard M Johnston 3/1/05

**INVESTOR:**

The Weldon Foundation, Inc.

By: /s/ Norman R. Weldon

Name: Norman R. Weldon
Title: President

**INVESTOR:**

Norman R. Weldon

By: /s/ Norman R. Weldon

Name: Norman R. Weldon
Title:

**ATRICURE, INC.**

# AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT

**JUNE 6, 2002**

***EXECUTION COPY***

**ATRICURE, INC.**

**AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT**

**THIS AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** (this "Agreement") is made as of this 6th day of June, 2002, by and among ATRICURE, INC., a Delaware corporation (the "Company"), the holders of the Company's Series A Convertible Preferred Stock (the "Series A Stock") and Series B Convertible Preferred Stock (the "Series B Stock") listed on Exhibit A hereto (collectively, the "Investors"), the founding common stockholders of the Company listed on Exhibit B attached hereto (each a "Founder," and collectively, the "Founders"), and the other holders of Common Stock listed on the signature pages to this Agreement (such stockholders, along with the Investors and the Founders, collectively, the "Stockholders").

**RECITALS**

**WHEREAS**, the Company proposes to sell and issue shares of its Series B Stock pursuant to the Series B Convertible Preferred Stock Purchase Agreement of the same date herewith (the "Purchase Agreement"); and

**WHEREAS**, as an inducement for the purchase of the Series B Stock by certain of the Investors, the Company and the Stockholders have agreed to enter into this Agreement (which agreement amends and restates the Right of First Refusal and Co-Sale Agreement, dated as of May 25, 2001, among the Company, the holders of the Company's Series A Stock and the Founders (the "Original Agreement")) and to grant those Investors purchasing Series B Stock certain right of first refusal and co-sale rights.

**NOW, THEREFORE**, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement and in the Purchase Agreement, the parties mutually agree as follows:

**1. DEFINITIONS.**

**(a) "Capital Stock"** shall mean shares of Preferred Stock and Common Stock.

**(b) "Common Stock"** shall mean the Company's Common Stock (including shares of Common Stock issued upon conversion of the Preferred Stock) and shares of Common Stock issuable upon the exercise of any option, warrant or other security or right of any kind convertible into or exchangeable for Common Stock (other than the Preferred Stock).

**(c) "Co-Sale Stock"** shall mean shares of the Company's Common Stock now owned or subsequently acquired by a Founder, whether or not such securities are registered in such Founder's name or beneficially or otherwise legally owned by such Founder, including any interest of such Founder's spouse or immediate family members (or any trust created for the

benefit of any of them) in shares of the Company's Common Stock, whether that interest is asserted pursuant to marital property laws or otherwise. The number of shares of Co-Sale Stock owned by a Founder (including shares owned by such Founder's spouse or immediate family members (or any trust created for the benefit of any of them)) as of the date hereof are set forth on Exhibit B, which Exhibit may be amended from time to time by the Company to reflect changes in the number of shares of Co-Sale Stock owned by a Founder (or his spouse, immediate family member or trust), but the failure to so amend shall have no effect on such Co-Sale Stock being subject to this Agreement.

**(d) "Investor Stock"** shall mean shares of Preferred Stock and shares of Common Stock issued upon conversion of the Preferred Stock.

**(e) "Preferred Stock"** shall mean shares of Series A Stock of the Company and/or Series B Stock held by the Investors and listed opposite such Investor's name on Exhibit A hereto. Exhibit A may be amended from time to time by the Company to reflect changes in the number of shares of Preferred Stock held by any Investor (or by any new Investor), but the failure to so amend shall have no effect on any rights of any Investor under this Agreement.

**(f)** For the purpose of this Agreement, the term **"Transfer"** shall include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any of the Co-Sale Stock.

**2. TRANSFERS BY A FOUNDER.**

**(a) Notice of Transfer.** If a Founder proposes to Transfer any shares of Co-Sale Stock, then the Founder shall promptly give written notice (the "Transfer Notice") simultaneously to the Company and to each of the Investors at least thirty (30) days prior to the closing of such Transfer. The Transfer Notice shall describe in reasonable detail the proposed Transfer including, without limitation, the number of shares of Co-Sale Stock to be transferred, the nature of such Transfer, the consideration to be paid, and the name and address of each prospective purchaser or transferee. In the event that the Transfer is being made pursuant to the provisions of Section 3(a) hereof, the Transfer Notice shall state under which subsection thereof the Transfer is being made.

**(b) Right of First Refusal.** The Company shall have a right of first refusal to purchase any and all Co-Sale Stock that a Founder proposes to Transfer. Subject to the exercise of this right of first refusal by the Company, the Investors shall have the right to purchase all of the Co-Sale Stock not repurchased by the Company (the "Right of First Refusal"). The Company shall within five (5) days after receipt of the Transfer Notice give written notice to the Founder and the Investors of the number of shares of Co-Sale Stock the Company intends to repurchase.

**(i)** Each Investor's Right of First Refusal shall be to purchase its *pro rata* share of the balance of Co-Sale Stock to be Transferred by the Founder as specified in the

Transfer Notice remaining after the Company exercises its right of first refusal. An Investor may exercise its right by giving written notice (the "Buy Notice") to the Founder, with a copy to the Company, within fifteen (15) days after its receipt of the Transfer Notice, specifying the maximum number of shares of Co-Sale Stock such Investor wishes to buy under its Right of First Refusal. Each Investor who so elects to buy part of the Co-Sale Stock to be Transferred shall hereinafter be referred to as a "Buyer."

**(ii)** If the total number of shares specified in all such Buy Notices exceeds the number of shares of Co-Sale Stock referred to in said Transfer Notice, each Buyer shall be entitled to purchase such portion of the Co-Sale Stock to be Transferred as the number of shares of Investor Stock owned by it bears to the total number of shares of Investor Stock owned by all Buyers. If all of the Co-Sale Stock to be Transferred is not allocated under such apportionment, each Buyer whose Buy Notice specified a number of shares in excess of its proportionate share, as provided above, shall be entitled to purchase such proportion of those shares which remain thus unallocated as the total number of shares of Investor Stock which it owns bears to the total number of shares of Investor Stock owned by all Buyers desiring to purchase excess shares. Such apportionment shall be made successively until all of the shares of Co-Sale Stock to be Transferred have been allocated to Buyers up to the aggregate number of shares specified in all Buy Notices. Notwithstanding the foregoing, all apportionments required by this subsection (ii) must be made within five (5) days after the Founder's receipt of the Buy Notice.

**(iii)** To the extent there are shares of Co-Sale Stock to be Transferred remaining after the allocations of subsection (ii) above, the Founder may, subject to the right of co-sale specified in Subsection (d) below, Transfer them to the prospective purchaser or transferee specified in the Transfer Notice.

**(c) First Refusal Closing.** The Founder shall notify the Company and the Buyers as soon as practicable of the closing of the Transfer of the Co-Sale Stock to the Company and/or the Buyers (the "First Refusal Closing"). At the First Refusal Closing, such certificates or other instruments will be delivered, duly endorsed for transfer, free and clear of all liens and encumbrances, to the Company and/or the Buyers, and the Company and/or the Buyers will remit to the Founder the consideration per share of Co-Sale Stock as contained in the Transfer Notice.

**(d) Right of Co-Sale.** Subject to exercise of any right of first refusal in favor of the Company or the Investors, each Investor shall have the right, exercisable upon written notice ("Co-Sale Notice") to such Founder within fifteen (15) days after the Transfer Notice, to participate in such Transfer of Co-Sale Stock on the same terms and conditions. Each Investor who so elects to participate in the Transfer pursuant to this Subsection (d) shall hereinafter be referred to as a "Participant." Such Co-Sale Notice shall indicate the number of shares of Common Stock that such Participant wishes to sell under his or her right to participate. To the extent one or more of the Investors exercise such right of participation in accordance with the terms and conditions set forth below, the number of shares of Co-Sale Stock that such Founder may sell in the transaction shall be correspondingly reduced.

**(i)** Each Participant may sell all or any part of that number of shares equal to the product obtained by multiplying (i) the aggregate balance of shares of Co-Sale Stock covered

by the Transfer Notice remaining after exercise of the Company's and the Investors' Rights of First Refusal by (ii) a fraction, the numerator of which is the number of shares of Investor Stock owned by such Participant at the time of the Transfer, and the denominator of which is the total number of shares of Investor Stock owned by such Founder and all the Investors at the time of the Transfer.

**(ii)** Each Participant shall effect its participation in the Transfer by promptly delivering to such Founder for transfer to the prospective purchaser one or more certificates, properly endorsed for transfer, which represent:

**(1)** the type and number of shares of Common Stock which such Participant elects to sell; or

**(2)** that number of shares of Preferred Stock which is at such time convertible into the number of shares of Common Stock which such Participant elects to sell; provided, however, that if the prospective purchaser objects to the delivery of Preferred Stock in lieu of Common Stock, such Participant shall convert such Preferred Stock into Common Stock and deliver Common Stock as provided in Section 2(d)(ii)(1) above. The Company agrees to make any such conversion concurrent with the actual transfer of such shares to the prospective purchaser.

**(iii)** The stock certificate or certificates that the Participant delivers to such Founder pursuant to Section 2(d)(ii) above shall be transferred to the prospective purchaser in consummation of the sale of the Common Stock pursuant to the terms and conditions specified in the Transfer Notice, and the Founder shall concurrently therewith remit to such Participant that portion of the sale proceeds to which such Participant is entitled by reason of its participation in such sale. To the extent that any prospective purchaser or purchasers prohibits such assignment or otherwise refuses to purchase shares or other securities from a Participant exercising its rights of co-sale hereunder, such Founder shall not sell to such prospective purchaser or purchasers any Co-Sale Stock unless and until, simultaneously with such sale, such Founder shall purchase such shares or other securities from such Participant on the same terms and conditions specified in the Transfer Notice.

**(e)** The exercise or non-exercise of the rights of the Investors hereunder to participate in one or more Transfers of Co-Sale Stock made by such Founder shall not adversely affect their rights to participate in subsequent Transfers of Co-Sale Stock.

**(f)** The Founder shall have sixty (60) days after the giving of the Transfer Notice to Transfer the shares of Co-Sale Stock specified in the Transfer Notice as to which neither the rights of first refusal nor the co-sale rights set forth in this Agreement have been exercised, at the price and upon terms and conditions not materially more beneficial to the Founder than specified in the Transfer Notice. If the Founder has not Transferred said shares of Co-Sale Stock within said 60 days, the Founder shall not thereafter Transfer any shares of Co-Sale Stock without first giving a new Transfer Notice and otherwise fully complying with the terms and conditions of this Agreement.

**3. EXEMPT TRANSFERS.**

**(a)** Notwithstanding the foregoing, the rights of first refusal and co-sale rights of the Company and the Investors shall not apply to (i) any transfer or transfers by a Founder which in the aggregate, over the term of this Agreement, amount to no more than five percent (5%) of the shares of Co-Sale Stock held by the Founder as of June 6, 2002 (as adjusted for stock splits, dividends and the like), (ii) any transfer to the ancestors, descendants or spouse or to trusts for the benefit of such persons or the Founder, (iii) any transfer or transfers by a Founder to another Founder (the "Transferee-Founder") so long as the Transferee-Founder is, at the time of the transfer, employed by or acting as a consultant, officer or director of the Company, (iv) any pledge of Co-Sale Stock made pursuant to a bona fide loan transaction with a financial institution that creates a mere security interest, or (v) any bona fide gift; provided that in the event of any transfer made pursuant to one of the exemptions provided by clauses (ii), (iii), (iv) and (v), (A) the Founder shall inform the Company and the Investors of such pledge, transfer or gift prior to effecting it and (B) the pledgee, transferee or donee shall furnish the Company and the Investors with a written agreement to be bound by and comply with all provisions of this Agreement. Except with respect to Co-Sale Stock transferred under clause (i) above (which Co-Sale Stock shall no longer be subject to the rights of first refusal and co-sale rights of the Company and the Investors), such transferred Co-Sale Stock shall remain "Co-Sale Stock" hereunder, and such pledgee, transferee or donee shall be treated as a "Founder" for purposes of this Agreement.

**(b)** The provisions of Section 2 hereof shall not apply to the sale of any Co-Sale Stock to the Company or to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act").

**(c)** This Agreement is subject to, and shall in no manner limit the right which the Company may have to repurchase securities from the Founder pursuant to (i) a stock restriction agreement or other agreement between the Company and the Founder and (ii) any right of first refusal set forth in the Bylaws of the Company.

**4. PROHIBITED TRANSFERS.**

**(a)** In the event that a Founder should Transfer any Co-Sale Stock in contravention of the rights of first refusal or co-sale rights under this Agreement (a "Prohibited Transfer"), each Investor, in addition to such other remedies as may be available at law, in equity or hereunder, shall have the put option provided below, and such Founder shall be bound by the applicable provisions of such option.

**(b)** In the event of a Prohibited Transfer, each Investor shall have the right to sell to such Founder the type and number of shares of Common Stock equal to the number of shares each Investor would have been entitled to transfer to the purchaser under Section 2(d) hereof had the Prohibited Transfer been effected pursuant to and in compliance with the terms hereof. Such sale shall be made on the following terms and conditions:

**(i)** The price per share at which the shares are to be sold to the Founder shall be equal to the price per share paid by the purchaser to such Founder in

such Prohibited Transfer. The Founder shall also reimburse each Investor for any and all fees and expenses, including legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Investor's rights under Section 2 hereof:

**(ii)** Within ninety (90) days after the date on which an Investor received notice of the Prohibited Transfer or otherwise became aware of the Prohibited Transfer, such Investor shall, if exercising the option created hereby, deliver to the Company's general legal counsel the certificate or certificates representing shares to be sold, each certificate to be properly endorsed for transfer. The Company's general legal counsel shall promptly notify the Founder of the exercise of the put option.

**(iii)** Such Founder shall, within thirty (30) days after receipt of notice from the Company's general legal counsel that an Investor has exercised its put option, deliver to the Company's general legal counsel the aggregate purchase price therefor and the amount of reimbursable fees and expenses, as specified in Section 4(b)(i) above, in cash or by other means acceptable to the Investor.

**(iv)** Upon receipt of the aggregate purchase price and reimbursable fees and expenses specified in subsection (iii) above, the Company's general legal counsel shall deliver the same to the Investor who had exercised its put option. The Company's general legal counsel shall then cause the certificate(s) to be transferred into the name of the Founder and shall deliver the same to the Founder with the legends specified in Section 6(a) below.

**(v)** Notwithstanding the foregoing, any attempt by a Founder to transfer Co-Sale Stock in violation of Section 2 hereof shall be voidable at the option of a majority in interest of the Investors if such Investors do not elect to exercise the put option set forth in this Section 4, and the Company agrees it will not effect such a transfer nor will it treat any alleged transferee as the holder of such shares without the written consent of a majority in interest of the Investors.

**5. TAKE-ALONG RIGHTS.**

**(a)** If any person or entity offers to acquire all or substantially all of the assets or business of the Company, by merger, sale of assets, stock purchase or otherwise, and the holders of (i) 66 2/3% in interest of the then outstanding shares of Series A Stock, (ii) 66 2/3% in interest of the then outstanding shares of Series B Stock and (iii) a majority in interest of the then outstanding shares of Common Stock, voting separately, have voted in favor of such transaction (whether at an annual or special meeting of stockholders or by written consent in lieu of a meeting of stockholders) (an "Approved Sale"), then all remaining holders of Series A Stock, Series B Stock and Common Stock shall be obligated to (a) vote all of their shares of Capital Stock (the "Shares") in favor of the transaction, (b) sell, transfer or exchange all of their Shares

in connection with such transaction on the same terms as those consented to by such consenting holders of the Company's voting Capital Stock (with appropriate adjustment to reflect the conversion of convertible securities and the preference and priorities of the Company's Preferred Stock), and (c) execute and deliver such instruments of conveyance and transfer and take such other actions, including executing any purchase agreement, merger agreement, indemnity agreement, escrow agreement or related documents, as may be reasonably required by the Company in order to carry out the terms and provision of this Section 5.

**(b)** If the Approved Sale is structured as a merger or consolidation, all holders of Series A Stock, Series B Stock and Common Stock (each an "Obligee") shall waive any dissenters' rights, appraisal rights or similar rights in connection with the Approved Sale. If an Obligee fails or refuses to vote or sell his, her or its Shares as required by, or votes its Shares in contravention of, this Section 5, then each such Obligee hereby grants to the Company's then Chief Executive Officer an irrevocable proxy, coupled with an interest, to vote such Shares in accordance with this Section 5, and hereby appoints such officer its attorney in fact, to sell such Shares in accordance with the terms of this Section 5. At the closing of such transaction, each Obligee shall deliver, against receipt of the consideration payable in such transaction, certificates representing the Shares which such Obligee holds of record or beneficially, with all endorsements necessary for transfer. In the event that an Obligee fails or refuses to comply with the provisions of this Section 5, the Company, the Stockholders and the purchaser in such transaction, at their option, may elect to proceed with such transaction notwithstanding such failure or refusal and, in such event and upon tender of the specified consideration to any Obligee, the rights of any such Obligee with respect to the Shares of such Obligee shall cease.

**6. LEGEND.**

**(a)** Each certificate representing shares of Co-Sale Stock now or hereafter owned by a Founder or issued to any person in connection with a transfer pursuant to Section 3(a) hereof shall be endorsed with the following legend:

> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND BETWEEN THE INVESTOR, THE COMPANY AND CERTAIN HOLDERS OF STOCK OF THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

Each Founder agrees to submit promptly to the Company all certificates evidencing any shares of Co-Sale Stock owned by him/her/it of record or beneficially, directly or indirectly, in order that the Company may endorse the foregoing legend on such certificates. The Company agrees to endorse the foregoing legend on all certificates evidencing any shares of Co-Sale Stock whether now outstanding or issued hereafter.

**(b)** Each Founder agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in

Section 6(a) above to enforce the provisions of this Agreement and the Company agrees to promptly do so. The legend shall be removed upon termination of this Agreement.

**7. MISCELLANEOUS.**

**(a) Conditions to Exercise of Rights.** Exercise of the Investors' rights under this Agreement shall be subject to and conditioned upon, and the Founders and the Company shall use their best efforts to assist each Investor in, compliance with applicable laws.

**(b) Governing Law.** This Agreement shall be governed by and construed under the laws of the State of New York without regard to its conflicts of laws principles.

**(c) Amendment and Waiver.** Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by the written consent of (i) the Company, (ii) the holders of a majority of the Common Stock then held by Founders, (iii) the holders of at least sixty-six and two-thirds percent (66-2/3%) of the Series A Stock then held by Investors and their permitted assignees pursuant to Section 7(d) below, and (iv) the holders of at least a majority of the Series B Stock then held by Investors and their permitted assignees pursuant to Section 7(d) below. Any amendment or waiver effected in accordance with this Section 7(c) shall be binding upon the Company and all of the Stockholders; provided that no amendment or waiver of this Agreement shall materially and adversely affect the rights of a party in a manner that discriminates against such party vis-à-vis other parties in the same class without such party's written consent. Notwithstanding the foregoing, this Agreement may be amended with only the written consent of the Company to include additional purchasers of Series B Stock as "Investors" and parties hereto.

**(d) Successors and Assigns.** This Agreement and the rights and obligations of the parties hereunder shall inure to the benefit of, and be binding upon, their respective successors, assigns and legal representatives.

**(e) Term.** This Agreement shall terminate upon the earlier of (i) the consummation of a Qualified Public Offering (as defined in Article IV, Section 2(b)(i) of the Company's Certificate of Incorporation), or (ii) the acquisition of all, or substantially all, of the Company's assets or business, by asset sale, merger, consolidation or otherwise.

**(f) Ownership.** Each Founder represents and warrants that he/she is the sole legal and beneficial owner of those shares of Co-Sale Stock he/she currently holds subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares.

**(g) Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery. All communications shall be sent to

the party to be notified at the address set forth on the Company's records or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

**(h) Severability.** If any provision of this Agreement is held to be unenforceable under applicable law, it shall be interpreted, to the extent possible, to enhance its enforceability in order to achieve the intent of the parties to this Agreement. But if no feasible construction would save the provision, the parties agree to renegotiate such provision in good faith. In the event the parties cannot reach a mutually agreeable and enforceable replacement for such provision, its invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; rather this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. The invalidity of any provision of this Agreement as applied to certain circumstances shall not affect the validity or enforceability of such provision as applied to other circumstances or any other provisions of this Agreement.

**(i) Attorneys' Fees.** In the event that any dispute among the parties to this Agreement should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**(j) Entire Agreement.** This Agreement and the Exhibits hereto, along with the Purchase Agreement and each of the Exhibits thereto and all agreements, certificates and documents delivered thereunder, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein. This Agreement supercedes all prior agreements and undertakings, written (including, without limitation, the Original Agreement) and oral, with respect to the subject matter hereof.

**(k) Counterparts.** This Agreement may be executed by facsimile signatures and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**(l) Further Assurances.** Each of the parties hereto shall execute and deliver such instruments and take such other actions as the other parties may reasonably request in order to carry out the intent of this Agreement.

**(m) Rights of Investors.** Each Investor shall have the absolute right to exercise or refrain from exercising any right or rights that such Investor may have by reason of this Agreement including, without limitation, the right to consent to any wavier or amendment of this Agreement. Each such Investor shall not incur any liability to any other Investor with respect to exercising or refraining from exercising any such right or rights.

**(n) Assignment of Rights.** The rights of first refusal and the co-sale rights granted by this Agreement may be assigned by an Investor only to a transferee or assignee of shares of Investor Stock which (a) is a general partner, limited partner, retired partner, member or retired member of the Investor, or (b) is an affiliate of the Investor, or (c) is the Investor's family member or a trust for the benefit of an individual Investor or family member, or (d) acquires at least 250,000 shares of the stock (as appropriately adjusted for stock splits and the like); provided, however, (i) the assigning Investor shall have furnished to the Company and all other parties to this Agreement written notice of the name and address of such transferee or assignee and the securities with respect to which such rights are being assigned, and (ii) such transferee shall agree to be subject to all restrictions on Investors set forth in this Agreement. An "affiliate" of an Investor is a person directly or indirectly (through one or more intermediaries) controlling, controlled by, or under common control with, that Investor.

**(o) Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

**(p) Construction and Titles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. A reference herein to any Section shall be deemed to include a reference to every subsection thereof. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as to the identity of the parties hereto may require.

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**Exhibit A**

**SCHEDULE OF INVESTORS**

| Name and Address | Shares of Preferred Stock |
|---|---|
| U.S. Venture Partners VIII, L.P.<br>Attn: Chief Financial Officer<br>2180 Sand Hill Road #300<br>Menlo Park, CA 94025<br>Facsimile: (650) 854-3018 | 9,358,979 |
| U.S. Venture Affiliates Fund, L.P.<br>Attn: Chief Financial Officer<br>2180 Sand Hill Road #300<br>Menlo Park, CA 94025<br>Facsimile: (650) 854-3018 | 68,961 |
| U.S. Entrepreneur Partners VIII-A, L.P.<br>Attn: Chief Financial Officer<br>2180 Sand Hill Road #300<br>Menlo Park, CA 94025<br>Facsimile: (650) 854-3018 | 87,678 |
| U.S. Entrepreneur Partners VIII-B, L.P.<br>Attn: Chief Financial Officer<br>2180 Sand Hill Road #300<br>Menlo Park, CA 94025<br>Facsimile: (650) 854-3018 | 47,041 |
| Charter Ventures IV, L.P.<br>525 University Ave., Suite 1400<br>Palo Alto, CA 94301<br>Facsimile: (650) 325-4762 | 2,788,246 |
| Charter Entrepreneurs Fund IV, L.P.<br>525 University Ave., Suite 1400<br>Palo Alto, CA 94301<br>Facsimile: (650) 325-4762 | 149,350 |
| Charter Advisors Fund IV, L.P.<br>525 University Ave., Suite 1400<br>Palo Alto, CA 94301<br>Facsimile: (650) 325-4762 | 52,993 |
| Partisan Management Group, Inc.<br>293 Pearl Street<br>Boulder, CO 80302<br>Facsimile: (303) 444-0038 | 651,711 |
| The Weldon Foundation, Inc.<br>3200 N. Ocean Blvd., #2610<br>Ft. Lauderdale, FL 33308<br>Facsimile: (303) 444-0038 | 916,069 |

| Name and Address | Shares of Preferred Stock |
|---|---|
| Utako K. Hudson<br>1010 Wilder, Apt. 704<br>Honolulu, HI 96822-2656 | 53,927 |
| Carol J. Weldon<br>3200 N. Ocean Blvd., #2610<br>Ft. Lauderdale, FL 33308<br>Facsimile: (303) 444-0038 | 299,261 |
| Frank M. Fischer<br>86 Faxon Road<br>Atherton, CA 94027 | 58,165 |
| Donald C. Harrison, M.D.<br>9250 Old Indian Hill Road<br>Indian Hill, OH 45243 | 484,511 |
| Karen J. Cassidy<br>293 Pearl Street<br>Boulder, CO 80302<br>Facsimile: (303) 444-0038 | 107,591 |
| Lowell S. Lifschultz<br>Epstein Becker & Green, P.C.<br>250 Park Avenue<br>New York, NY 10177-0077<br>Facsimile: (212) 661-0989 | 232,131 |
| Christian L. Mazzola, As Trustee<br>For The Christian L. Mazzola<br>Revocable Trust Dated July 29, 1993<br>4417 N.W. 93rd Doral Court<br>Miami, FL 33178<br>Facsimile: (305) 418-4035 | 41,214 |
| Richard J. D'Augustine<br>7413 Pinehurst Drive<br>Cincinnati, OH 45244 | 52,030 |
| Merida A. D'Augustine<br>7413 Pinehurst Drive<br>Cincinnati, OH 45244 | 31,924 |
| Michael D. Hooven<br>7778 Bennington Drive<br>Cincinnati, OH 45241 | 41,435 |
| Karen P. Robards<br>173 Riverside Drive<br>New York, NY 10024 | 441,921 |

| Name and Address | Shares of Preferred Stock |
|---|---|
| Raymond W. Ogle<br>9648 Sycamore Trace Court<br>Cincinnati, OH 45242 | 54,248 |
| William P. Santamore, Ph.D.<br>1 Townsend Court<br>Medford, NJ 08055 | 41,214 |
| Stewart H. Greenfield<br>279 Sturges Highway<br>Westport, CT 06880 | 103,379 |
| Robert A. Kline<br>815 Trailridge Drive<br>Louisville, CO 80027 | 39,683 |
| Randall Wolf, M.D., Amy Sternstein<br>N. 816 Doan Hall<br>410 W. 10th Avenue<br>Columbus, OH 43210 | 55,928 |
| Camden Partners Strategic Fund II-A, L.P.<br>One South Street, Suite 2150<br>Baltimore, Maryland 21202<br>Attn: Richard M. Johnston<br>Facsimile: (410) 895-3805 | 3,300,699 |
| Camden Partners Strategic Fund II-B, L.P.<br>One South Street, Suite 2150<br>Baltimore, Maryland 21202<br>Attn: Richard M. Johnston<br>Facsimile: (410) 895-3805 | 195,804 |
| Foundation Medical Partners, L.P.<br>105 Rowayton Ave.<br>Rowayton, CT 06853<br>Attn: Lee R. Wrubel, M.D.<br>Facsimile: (203) 831-8289 | 2,097,902 |
| New England Partners Capital, L.P.<br>One Boston Place, Suite 2100<br>Boston, Massachusetts 02108<br>Attn: John Rousseau<br>Facsimile: (617) 624 8416 | 699,301 |
| O Street Corporation<br>1775 Pennsylvania Avenue, NW<br>Washington, DC 20006<br>Attn: Curtin Winsor<br>Facsimile: (202) 496-5600 | 34,965 |

| Name and Address | Shares of Preferred Stock |
|---|---|
| Elizabeth H. Lifschultz<br>132 Old Roaring Brook Road<br>Mount Kisco, NY 10549<br>Facsimile: (914) 241-1472 | 147,902 |
| Duke University Special Ventures Fund, Inc.<br>Suite 1000<br>2200 West Main Street<br>Durham, NC 27705 | 39,683 |
| Roger Stern<br>10418 Palo Vista Road<br>Cupertino, CA 95014 | 69,930 |
| **TOTAL:** | 22,845,776 |

NOTE: THE ABOVE NUMBERS INCLUDE INTEREST ON THE CONVERTIBLE PROMISSORY NOTES DATED AS OF APRIL 22, 2002, AS CALCULATED THROUGH JUNE 6, 2002

## EXHIBIT B

### CO-SALE STOCK OWNERSHIP

| NAME AND ADDRESS OF FOUNDER | SHARES OF CO-SALE STOCK |
|---|---|
| 1. Norman R. Weldon<br>3200 N. Ocean Blvd., #2610<br>Ft. Lauderdale, FL 33308 | 605,000 |
| 2. Karen J. Cassidy<br>293 Pearl Street<br>Boulder, CO 80302 | 505,000 |
| 3. Michael D. Hooven<br>7778 Bennington Drive<br>Cincinnati, OH 45241 | 3,200,000[1] |
| 4. Donald C. Harrison, M.D.<br>9250 Old Indian Hill Road<br>Indian Hill, OH 45243 | 293,000 |
| 5. Susan Spies<br>7778 Bennington Drive<br>Cincinnati, OH 45241 | 3,200,000[1] |

[1] Note: As Michael D. Hooven and Susan Spies are husband and wife, each Founder's amount of shares includes the shares held by the other spouse.

IN WITNESS WHEREOF, the foregoing **AMENDED AND RESTATED RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** is hereby executed as of the date first above written.

**COMPANY**

**ATRICURE, INC.**

By: 

**Michael D. Hooven**
**President**

**INVESTORS:**

CHARTER VENTURES IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: 

**A. Barr Dolan**
**Managing Member**

CHARTER ENTREPRENEURS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: 

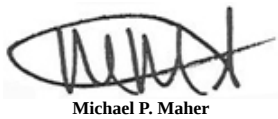
**A. Barr Dolan**
**Managing Member**

CHARTER ADVISORS FUND IV, L.P.
By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: 

**A. Barr Dolan**
**Managing Member**

U.S. VENTURE PARTNERS VII, L.P.
USVP VIII AFFILIATES FUND, L.P.
USVP ENTREPRENEUR PARTNERS VIII-A, L.P.
USVP ENTREPRENEUR PARTNERS VIII-B, L.P.
By Presidio Management Group VIII, L.L.C,
The General Partner of Each

By: 

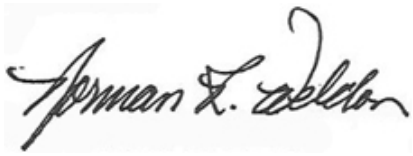
**Michael P. Maher**
**Attorney-In-Fact**

**INVESTORS (CONT.):**

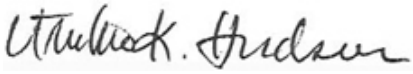
PARTISAN MANAGEMENT GROUP, INC.

By:
Name: **Karen J. Cassidy**
Title: **Managing Director**

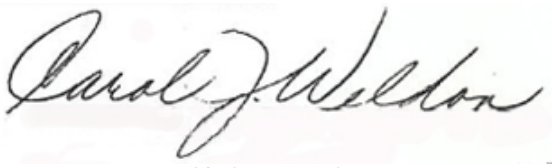
THE WELDON FOUNDATION, INC.



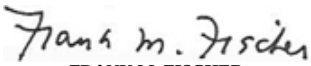
By:
Name: **Norman R. Weldon**
Title: **President**



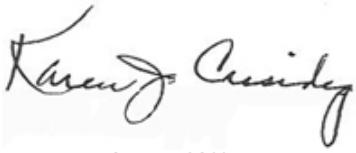
**UTAKO K. HUDSON**



**CAROL J. WELDON**

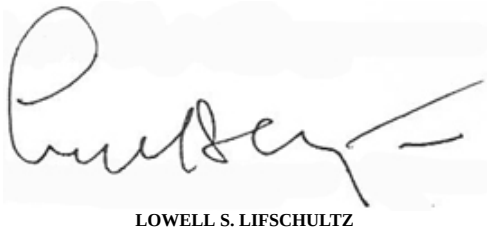


**FRANK M. FISCHER**



**KAREN J. CASSIDY**

**DONALD C. HARRISON, M.D.**



**LOWELL S. LIFSCHULTZ**

**Signature Page to Co–Sale Agreement**

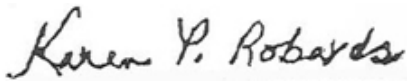
**INVESTORS (CONT.):**

**CHRISTIAN L. MAZZOLA, AS TRUSTEE FOR THE CHRISTIAN L. MAZZOLA REVOCABLE TRUST DATED JULY 29, 1993**

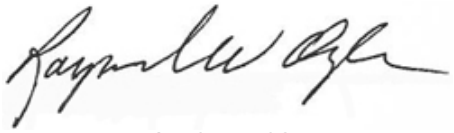
**RICHARD J. D'AUGUSTINE**

**MERIDA A. D'AUGUSTINE**

**MICHAEL D. HOOVEN**



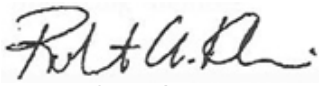
**KAREN P. ROBARDS**



**RAYMOND W. OGLE**

**WILLIAM P. SANTAMORE, PH.D.**

**STEWART H. GREENFIELD**



**ROBERT A. KLINE**

**Signature Page to Co–Sale Agreement**

**INVESTORS (CONT.):**

**RANDALL WOLF, M.D. AND AMY STERNSTEIN, HUSBAND AND WIFE**

NEW ENGLAND PARTNERS CAPITAL, L.P.
By: NEP Capital, LLP
Its: General Partner

By:

Name:
Title: **President**

FOUNDATION MEDICAL PARTNERS, L.P.
By: Foundation Medical Managers, LLC

By:

**Lee R. Wrubel, M.D.**
**Managing Member**

GREENFIELD FAMILY L.P.
By: Stewart H. Greenfield,
Its: General Partner

By:

Name: **Stewart H. Greenfield**

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.
By: Camden Partners Strategic II, LLC,
Its: General Partner

By:
Name: **David L. Warnock**
Title: **Managing Member**

**Signature Page to Co–Sale Agreement**

**Neal Triplett, Assistant Director**

**INVESTORS (CONT.):**

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

By:

Name: **David R. Shumate**
Title: **Authorized Agent**

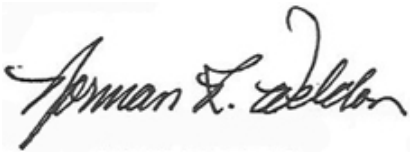
O STREET CORPORATION

By:
Name: **Curtin Winsor**
Title: **President**

**ELIZABETH H. LIFSCHULTZ**

**Signature Page to Co–Sale Agreement**

**FOUNDERS:**



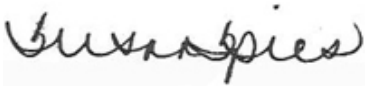
**NORMAN R. WELDON**

**KAREN J. CASSIDY**

From Amended & Restated Rights of First Refusal

**MICHAEL D. HOOVEN**

**DONALD C. HARRISON, M.D.**



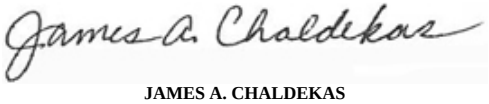
**SUSAN SPIES**

**Signature Page to Co–Sale Agreement**

**ACKNOWLEDGED AND AGREED TO AS TO SECTION 5 ONLY:**

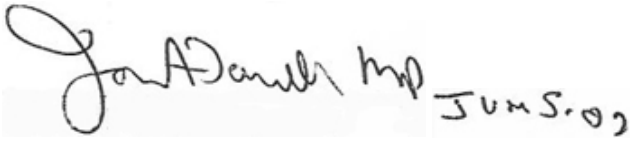
**OTHER STOCKHOLDERS:**

**PAUL A. BROOKE**

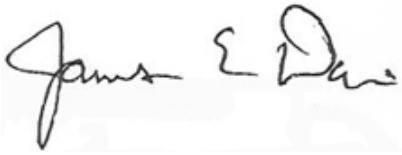


**JAMES A. CHALDEKAS**

**FREDERIC C. COLMAN**



**JAMES F. DANIELL, M.D.**

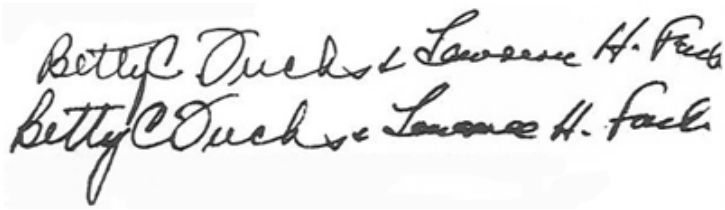


**JAMES E. DAVIS**

**JOSEPH H. DAVIS**

**ANN E. FISHER**

**JOHN G. FREUND**



**LAWRENCE H. FUCHS AND**
**BETTY C. FUCHS, HUSBAND AND WIFE**

**Signature Page to Co–Sale Agreement**

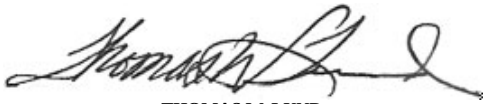
**OTHER STOCKHOLDERS (CONT'D.):**

**ANNETTE M. GERDING**

**DR. SYLVAN GOLDIN**

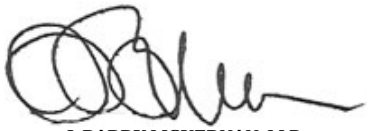
**STEVEN L. HENDERSON**

**BONNIE LEETMAA-LIVINGSTON**

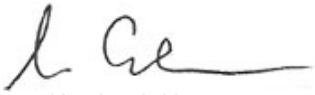


**THOMAS W. LUND**

**JOHN B. MARTIN, JR.**



**J. BARRY MCKERNAN, M.D.**



**SANFORD S. OSHER, M.D.**

**PHOTIOS PAULSON**

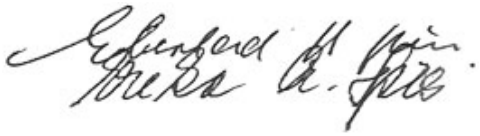
**EDWARD H. PHILLIPS, M.D.**

**LEONARD PINCHUK**

**Signature Page to Co–Sale Agreement**

**OTHER STOCKHOLDERS (CONT'D.):**

**C. DANIEL SMITH, M.D.**



**EBERHARD H. SPIES AND**
**ERIKA A. SPIES, HUSBAND AND WIFE**

**THOMAS D. WELDON, AS CUSTODIAN**
**FOR MATTHEW T. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT**

**THOMAS D. WELDON, AS CUSTODIAN**
**FOR ERIC R. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT**

**THOMAS D. WELDON, AS CUSTODIAN**
**FOR CHRISTOPHER R. WELDON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT**

**THOMAS D. WELDON, AS CUSTODIAN**
**FOR ANDREW M. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT**

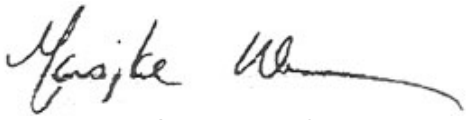
**R. DAVID WELDON**

**Signature Page to Co–Sale Agreement**

**OTHER STOCKHOLDERS (CONT'D.):**

**CYNTHIA M. WELDON, AS CUSTODIAN FOR MICHAEL J. WELDON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT**

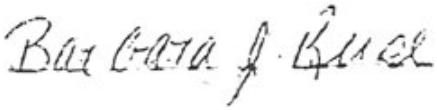
**DAVID J. WELDON**



**MARIJKE L. WELDON**

**PATRICIA K. WOOLF**

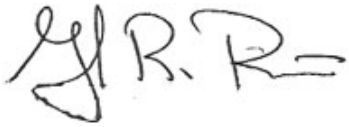
**ADAM HARP**



**BARBARA REESE**

**CANDY GARCIA**

**DEBORAH HEGENER**

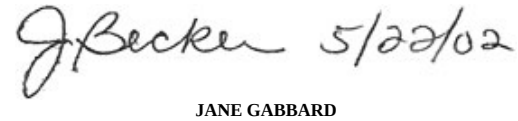


**GERALD PATTON**

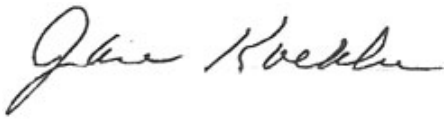
**GREG DRACH**

**Signature Page to Co–Sale Agreement**

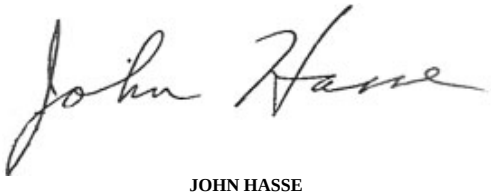
**OTHER STOCKHOLDERS (CONT'D.):**



**JANE GABBARD**



**JANE KOEHLER**

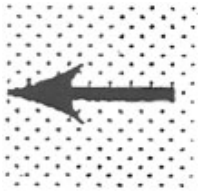


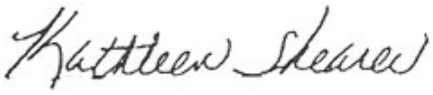
**JOHN HASSE**

**JON SHERMAN**

**KAREN SWEENEY**

**KATHLEEN HASSE**

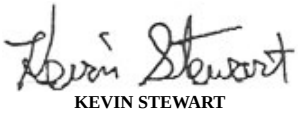




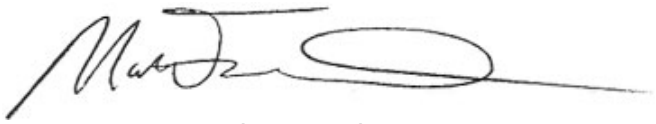
**KATHLEEN SHEARER**

**KEN MILLER**

**KENNETH MUELLER**



**KEVIN STEWART**



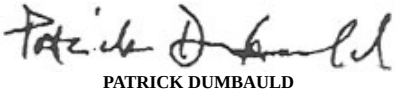
**MARK FRIEDMAN, PH.D.**

**OTHER STOCKHOLDERS (CONT'D.):**

**MATT WINKLER**

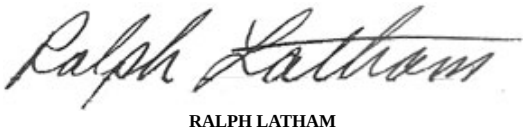
**NATACHA GAUCH**

**PATRICK ALEXANDER**

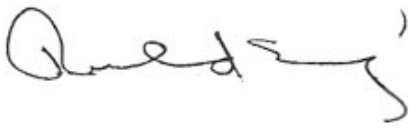


**PATRICK DUMBAULD**

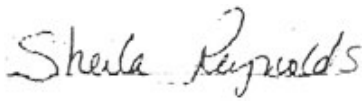
**PATRICK HUGHES**



**RALPH LATHAM**



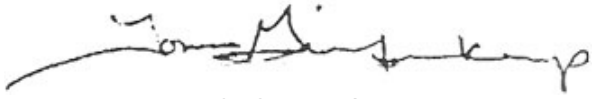
**RICHARD HARGIS**



**SHEILA REYNOLDS**

**SHELIA THOMAS ST 5-23-02**

**TED RICHARDSON**



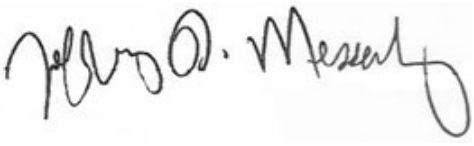
**TOM GREIFENKAMP**

**Signature Page to Co–Sale Agreement**

**OTHER STOCKHOLDERS (CONT'D.):**

**VICKIE WRIGHT**

**DAN DLUGOS**



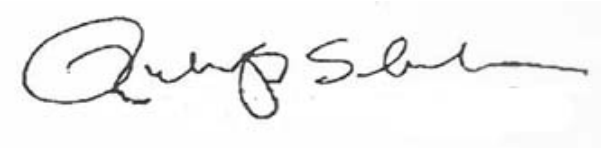
**JEFF MESSERLY**

**MARK CARLSON, M.D.**

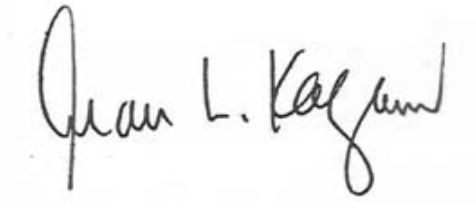
**DAVID HAINES, M.D.**

**JOAO MELO, M.D.**

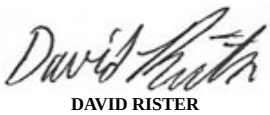
**BILL SCHNEEBERGER, M.D.**



**RICHARD SCHUESSLER, Ph.D.**



**ALAN L. KAGANOV**

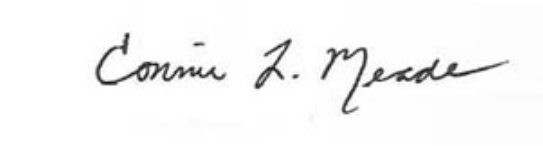


**DAVID RISTER**

**DOUG LADD**

**Signature Page to Co–Sale Agreement**

**OTHER STOCKHOLDERS (CONT'D.):**

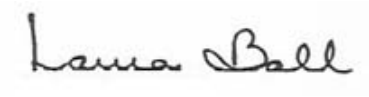


**CONNIE MEADE**

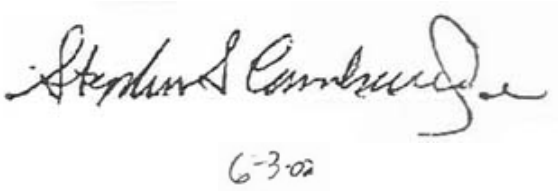
**STEFANO BENUSSI, M.D.**

**JUNE SIMMONS**

**PETER STAATS**



**LAURA BALL**



**STEVE CAMBRIDGE**

**JERRY RECKELHOFF**

**RIC RUFFHEAD**

**Signature Page to Co–Sale Agreements**

**Exhibit 4.3**

***EXECUTION COPY***

**ATRICURE, INC.**

**AMENDED AND RESTATED VOTING AGREEMENT**

This Amended and Restated Voting Agreement (this "Agreement") is entered into as of this 6th day of June, 2002, by and among AtriCure, Inc., a Delaware corporation (the "Company"), the undersigned holders of Common Stock of the Company (collectively, the "Common Stockholders"), the undersigned holders of Series A Preferred Stock of the Company (collectively, the "Series A Stockholders") and the undersigned purchasers of Series B Preferred Stock of the Company (collectively, the "Series B Stockholders"). The Common Stockholders, the Series A Stockholders and the Series B Stockholders are collectively referred to herein as the "Stockholders," with each a "Stockholder." All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Series B Convertible Preferred Stock Purchase Agreement of even date herewith ("Purchase Agreement").

RECITALS

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Series B Stockholders are purchasing shares of Series B Preferred Stock pursuant to the Purchase Agreement; and

WHEREAS, as a condition precedent to the investment by the Series B Stockholders, each of the signatories hereto, and any subsequent holder of record who acquires shares from the signatories hereto (except such persons who acquire such shares pursuant to a public disposition), desires to enter into and agree to be bound by this Agreement, which amends and restates the Voting Agreement, dated as of May 25, 2001, among the Company, the Common Stockholders and the Series A Stockholders (the "Old Agreement").

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Shares Subject to Agreement. The Stockholders each agree, as to all of the shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock of the Company that are now held by them and any and all other securities of the Company acquired by them after the date hereof or that may be issued upon conversion of any of the foregoing securities owned by them, together with any securities issued to the such person upon any exchange, stock split, stock dividend, recapitalization or the like (the "Shares"), that each shall vote all such Shares in accordance with the provisions of this Agreement.

2. Obligation to Vote Shares for Specific Nominees.

(a) Obligation as to Directors. In accordance with the terms of the Company's Certificate of Incorporation and Bylaws, until the termination of this Agreement pursuant to Section 5 hereof, each of the Stockholders hereby agrees, at any stockholder meeting, or upon any action by written consent in lieu of meeting, for the purpose of electing directors, to vote or cause to be voted or act with respect to all of the Shares held by such Stockholder or over which such Stockholder has voting control such that, whether or not cumulative voting is in effect, the following shall be elected as Company's Board of Directors:

(i) with respect to the three (3) Board members to be nominated and elected by the Common Stockholders pursuant to Article IV, Subsection 5(b)(iii) of the Company's Certificate of Incorporation, the Common Stockholders agree that: (x) such seats shall be designated by a majority in interest of the then issued and outstanding shares of Common Stock voting as a separate single class; (y) one of such seats shall be that individual who is then appointed by the Board of Directors to fill the position of Chief Executive Officer of the Company (the "CEO"); and (z) initially, the Common Stockholders hereby designate elect Michael D. Hooven, Norman R. Weldon and the CEO as members of the Board of Directors;

(ii) with respect to the two (2) Board members to be nominated and elected by the Series A Stockholders pursuant to Article IV, Subsection 5(b)(i) of the Company's Certificate of Incorporation, the Series A Stockholders agree that: (w) such seats shall be designated by a majority in interest of the then issued and outstanding shares of Series A Preferred Stock voting as a separate single class; (x) the Series A Stockholders will elect as one (1) of such Board members whomever may be designated by Charter Ventures IV, L.P. ("Charter") from time to time; (y) the Series A Stockholders will elect as one (1) of such Board members whomever may be designated by Partisan Management Group, Inc. ("Partisan") from time to time; and (z) initially Charter hereby designates Donald C. Harrison as a member of the Board of Directors and initially Partisan hereby designates Karen P. Robards as a member of the Board of Directors;

(iii) with respect to the two (2) Board members to be nominated and elected by the Series B Stockholders pursuant to Article IV, Subsection 5(b)(ii) of the Company's Certificate of Incorporation, the Series B Stockholders agree that: (w) such seats shall be designated by a majority in interest of the then issued and outstanding shares of Series B Preferred Stock voting as a separate single class; (x) the Series B Stockholders will elect as one (1) of such Board members

whomever may be designated by U.S. Venture Partners VIII, L.P. ("USVP") from time to time; (y) the Series B Stockholders will elect as one (1) of such Board members whomever may be designated by Camden Partners, Inc. ("Camden") from time to time; and (z) initially USVP hereby designates Alan Kaganov as a member of the Board of Directors and initially Camden hereby designates Richard M. Johnston as a member of the Board of Directors;

(iv) with respect to the one (1) Board member to be elected by the Stockholders pursuant to Article IV, Subsection 5(b)(iv) of the Company's Certificate of Incorporation, the Stockholders agree that such seat shall be held by an individual designated by the other members of the Board of directors, subject to the approval by a majority in interest of the Shares voting together, on an as-converted basis, as a single class (the "Majority Director"); initially, the Majority Director is hereby designated to be Delos M. Cosgrove, III, and

(v) any vote taken to remove any director elected pursuant to this Section 2, or to fill any vacancy created by the resignation or death of a director elected pursuant to this Section 2, shall also be subject to the provisions of this Section 2. Notwithstanding the foregoing, and in addition thereto, each of Charter, Partisan, USVP and Camden (each a "Designating Party") shall not vote to remove any director designated by any other Designating Party, except for bad faith or willful misconduct.

(b) Board Size. Effective upon the date hereof, the authorized size of the Board of Directors shall be eight (8). Notwithstanding anything in this Section 2 to the contrary, the number of directors constituting the entire Board of Directors of the Company may not be increased above eight (8) without the prior written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock voting as a single class.

(c) Designations by USVP, Charter, Partisan and Camden. Notwithstanding the provisions of Section 2(a)(ii) and 2(a)(iii), the right of each of USVP, Charter, Partisan and Camden to designate a Board member shall terminate as to such designating party at the time such designating party holds less than 1,000,000 shares of the Preferred Stock. For purposes of this Section 2(c), the following shares shall be aggregated: (i) with respect to Partisan, any shares of Preferred Stock held by Partisan, The Weldon Foundation, Inc., Carol J. Weldon and Karen C. Cassidy; or (ii) with respect to USVP, Charter, Partisan or Camden, any shares of Preferred Stock transferred by such designating party to (x) any person or entity that owns at least a majority of the voting equity of such designating party, (y) any entity in which such designating party owns at least a majority of the voting equity, or (z) any other person or entity, so long as such designating party maintains sole voting control of such shares; or (iii) with respect to USVP, Charter, Partisan or

Camden, any shares of Preferred Stock held by a person who is, with respect to USVP, Charter, Partisan or Camden, as the case may be, (x) a general partner, limited partner, retired partner, member or retired member of such entity, or (y) a family member of such individuals or a trust for the benefit of such individuals or the individual's family members, or (z) an affiliate of such entity (an "affiliate" of a person is a second person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with that first person). In addition, shares held by USVP VIII Affiliates, L.P., USVP Entrepreneur Partners VIII-A, L.P., and USVP Entrepreneur Partners VIII-A, L.P. shall be aggregated with those of USVP for purposes of this Section 2(c).

(d) Observer Rights. For as long as Karen J. Cassidy continues to hold at least fifty percent (50%) of the total shares of stock of the Company originally issued to her, Ms. Cassidy (hereinafter referred to as the "Observer") shall be entitled to notice of, to attend and to any documentation distributed to members of the Board of Directors, during or after, all meetings (including any action to be taken by written consent) of the Board of Directors and all committees thereof; provided, however, that the Company reserves the right to withhold any information and to exclude the Observer from any meeting or portion thereof (so long as the Company notifies the Observer of such withholding and of any action taken by the Board of Directors as a result of such meeting) if access to such information or attendance at such meeting would, (a) in the judgment of the Company's outside counsel, adversely affect the attorney-client privilege between the Company and its counsel or cause the Board of Directors to breach its fiduciary duties, (b) in the good faith determination of the Board of Directors, result in the disclosure of proprietary information regarding the Company's intellectual property rights, the disclosure of which would have an adverse effect on the Company or (c) in the good faith determination of the Board of Directors, involve a conflict of interest. The Company will use its commercially reasonable efforts to ensure that any withholding of information or any restriction on attendance is strictly limited only to the extent necessary set forth in the preceding sentence. The Observer shall not be (y) permitted to vote at any meeting of the Board of Directors, or (z) counted for purposes of determining whether there is sufficient quorum for the Board of Directors to conduct its business. The Observer shall hold all information received pursuant to this Agreement in the strictest confidence and shall not disclose the same to any third party (except Partisan's agents and representatives, including Norman R. Weldon) nor use the same for any purpose other than evaluating her investment in the Company.

3. Additional Parties to the Agreement.

(a) In connection with any sale, transfer, succession or assignment by any Stockholder subsequent to the date of this Agreement, other than by virtue of a sale to the public (pursuant to a registered public offering or a transaction under Rule 144 of the Act), the Company and each of the Stockholders shall require such purchaser, transferee, successor or assignee,, as a condition of such sale, transfer, succession or assignment, to agree in writing to be bound by all the terms and conditions of this Agreement. Notwithstanding anything in this Agreement to the contrary, this Agreement may be amended by the Company without the consent of the Stockholders to include each such purchaser, transferee, successor or assignee as a party hereto. Upon such purchaser, transferee, successor or assignee executing and delivering an additional counterpart signature page to

this Agreement, such purchaser, transferee, successor or assignee shall be deemed to be a "Stockholder" for all purposes under this Agreement. Upon any person becoming a party to this Agreement as a Stockholder, other than those persons who are original signatories to this Agreement, the Company shall forthwith notify all Stockholders of the name and address of such additional parties to this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, this Agreement may be amended by the Company without the consent of the Stockholders to include any holder of the Company's capital stock as a party hereto and which holder, upon executing and delivering an additional counterpart signature page to this Agreement, shall be deemed to be a "Stockholder" for all purposes under this Agreement.

4. Company Obligation. The Company shall take all reasonable steps to assure compliance with the provisions of this Agreement.

5. Termination. This Agreement shall terminate upon the earliest to occur of (a) a Qualified Public Offering (as defined in Article IV, Section 2(b)(i) of the Company's Certificate of Incorporation), (b) the merger or consolidation of the Company with or into any other corporation or entity that results in all Series A Preferred Stock and Series B Preferred Stock being converted into Common Stock (unless stockholders of the Company immediately prior to such transaction are holders of at least a majority of the voting securities of the surviving or acquiring corporation thereafter, and for the purposes of this calculation, voting securities of the surviving or acquiring corporation which any stockholder of the corporation owned immediately prior to such merger or consolidation as stockholders of another party to the transaction shall be disregarded) or (c) when less than 1,000,000 shares of Preferred Stock (excluding Conversion Stock) are outstanding.

6. Successors in Interest. The provisions of this Agreement shall be binding upon the successors in interest to any of the Shares, except as to Shares sold to the public (pursuant to a registered public offering or a transaction under Rule 144 of the Act). The Company shall not permit the transfer of any of the Shares on its books or issue a new certificate representing any of the Shares unless and until the person to whom such security is to be sold or transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person were a Stockholder, as defined herein; provided, however, that nothing in this Agreement shall in any way limit the ability of each Stockholder to sell any or all Shares to the public (pursuant to a registered public offering or a transaction under Rule 144 of the Act), and any Shares so distributed shall not be subject to this Agreement.

7. Inscription on Share Certificates.

(a) Each certificate representing any of the Shares shall be marked by the Company with a legend reading as follows:

THE SHARES REPRESENTED HEREBY ARE SUBJECT TO A VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED

FROM THE ISSUER). ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL OF THE PROVISIONS OF SUCH VOTING AGREEMENT.

Each Stockholder and assignee of a Stockholder agrees to submit promptly to the Company all certificates evidencing any shares of capital stock of the Company owned by him/her/it of record or beneficially, directly or indirectly, in order that the Company may endorse the foregoing legend on such certificates. The Company agrees to endorse the foregoing legend on all certificates evidencing any shares of its capital stock held by any Stockholder or assignee of a Stockholder whether now outstanding or issued hereafter.

(b) The Company agrees that, during the term of this Agreement, it will not remove, and will not permit to be removed (upon registration of transfer, reissuance or otherwise), the legend from any such certificate and will place or cause to be placed the legend on any new certificate issued to represent Shares theretofore represented by a certificate carrying the legend.

8. Notices. All notices and other communications required or permitted hereunder shall be in writing and, except as otherwise noted herein, shall be deemed effectively given (i) upon personal delivery, (ii) upon delivery by an internationally recognized courier (such as Fedex or DHL), (iii) when sent by confirmed telex or facsimile, if sent during normal business hours of the recipient; if not sent during normal business hours of the recipient, then on the next business day, or (iv) five (5) days after having been sent by registered or certified mail, postage prepaid; addressed: (a) if to the Company, to it at 6033 Schumacher Park Drive, West Chester, Ohio 45069, Attention: President (or at such other address as the Company shall have furnished to the Stockholders in writing), and (b) if to a Stockholder, to such Stockholder at the latest address of such Stockholder set forth on the Company's records.

9. Validity and Severability; Amendments.

(a) Each Stockholder represents and warrants that (a) such Stockholder now owns its Shares free and clear of liens or encumbrances and (b) such Stockholder has full power and capacity to execute, deliver and perform this Agreement, which has been duly executed and delivered by, and evidences the valid and binding obligation of, such Stockholder enforceable in accordance with its terms. The Shares, as of the date hereof, are not subject to a proxy, voting agreement or other obligation, restriction or agreement affecting the validity of this Agreement.

(b) If any provision of this Agreement is held to be unenforceable under applicable law, it shall be interpreted, to the extent possible, to enhance its enforceability in order to achieve the intent of the parties to this Agreement. But if no feasible construction would save the provision, the parties agree to renegotiate such provision in good faith. In the event the parties cannot reach a mutually agreeable and enforceable replacement for such provision, its invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; rather this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been

contained herein; provided, however, no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. The invalidity of any provision of this Agreement as applied to certain circumstances shall not affect the validity or enforceability of such provision as applied to other circumstances or any other provisions of this Agreement.

(c) Subject to Section 3 hereof, this Agreement may be amended only in writing upon the concurrence of: (i) with respect to Section 2(a)(i) hereof, the holders of a majority in interest of the then issued and outstanding shares of Common Stock; (ii) with respect to Sections 2(a)(ii), 2(a)(iii), 2(b) and 2(c) hereof, the holders of (A) 66-2/3% in interest of the then issued and outstanding shares of Series A Preferred Stock and (B) a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, voting separately (provided that the provisions with respect to designations of USVP, Charter, Partisan and Camden may only be amended by such designating party); and (iii) with respect to all other provisions of this Agreement, the holders of (x) 66-2/3% in interest of the then issued and outstanding shares of Series A Preferred Stock and (y) a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, voting separately and (z) the holders of a majority in interest of the then issued and outstanding shares of Common Stock, voting as a single class.

10. Governing Law. This Agreement shall be governed by and construed by the laws of the State of Delaware as applied to contracts between Delaware residents entered into and to be performed entirely within the State of Delaware.

11. Counterparts. This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

12. Further Action. If and whenever any Shares are sold, the selling stockholders or their personal representatives shall do all things and execute and deliver all documents and make all transfers, and cause any transferee of such Shares to do all things and execute and deliver all documents, as may be necessary to consummate such sale consistent with this Agreement.

13. Specific Performance. The parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto or to its heirs, personal representatives or assigns by reason of a failure to perform any of the obligations under this Agreement, and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or its heirs, personal representatives or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

14. Waiver. No waivers of any breach of this Agreement extended by any party to any other party shall be construed as a waiver of any rights or remedies of any other party or with respect to any subsequent breach.

15. Entire Agreement. This Agreement, along with the Purchase Agreement, each of the Exhibits thereto and the other documents delivered pursuant thereto, constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof, and supersede all prior agreements and undertakings, written and oral (including, without limitation, the Old Agreement), with respect to the subject matter hereof and thereof.

16. Descriptive Headings and Construction. The descriptive headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions hereof. A reference herein to any Section shall be deemed to include a reference to every subsection thereof. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as to the identity of the parties hereto may require.

17. Further Assurances. Each of the parties hereto shall execute and deliver such instruments and take such other actions as the other parties may reasonably request in order to carry out the intent of this Agreement.

18. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Voting Agreement on the day and year first set forth above.

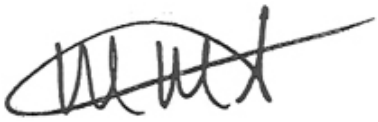
**"COMPANY"**

ATRICURE, INC.

By:
Name: Michael D. Hooven
Title: President

**"PREFERRED STOCKHOLDERS"**

U.S. VENTURE PARTNERS VIII, L.P.
USVP VIII AFFILIATES FUND, L.P.
USVP ENTREPRENEUR PARTNERS VIII-A, L.P.
USVP ENTREPRENEUR PARTNERS VIII-B, L.P.
By Presidio Management Group VIII, L.L.C.,
The General Partner of Each

By: 
Michael P. Maher
Attorney-In-Fact

CHARTER VENTURES IV, L.P.

By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: 
A. Barr Dolan
Managing Member

CHARTER ENTREPRENEURS FUND IV, L.P.

By: Charter Ventures IV Partners, LLC,
Its: General Partner

By: 
A. Barr Dolan
Managing Member

CHARTER ADVISORS FUND IV, L.P.

By: Charter Ventures IV Partners, LLC,
Its: General Partner

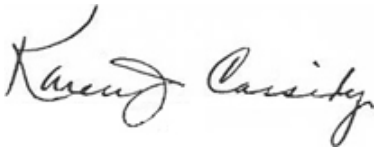
By: 
A. Barr Dolan
Managing Director

NEW ENGLAND PARTNERS CAPITAL, L.P.

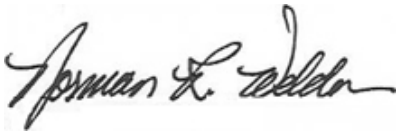
By: NEP Capital, LLP
Its: General Partner

By: 
Name:
Title:

PARTISAN MANAGEMENT GROUP, INC.

By: 
Name: Karen J. Cassidy
Title: Managing Director

THE WELDON FOUNDATION, INC.

By: 
Name: Norman R. Weldon
Title: President

CAMDEN PARTNERS STRATEGIC FUND II A, L.P.
CAMDEN PARTNERS STRATEGIC FUND II B, L.P.

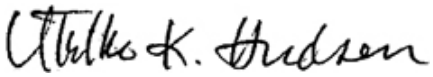
By: Camden Partners Strategic II, LLC,
Its: General Partner

By: 
Name: Richard M. Johnston
Title: Managing Member

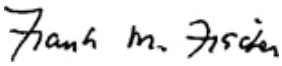
FOUNDATION MEDICAL PARTNERS, L.P.

By: Foundation Medical Managers, LLC
Its: General Partner

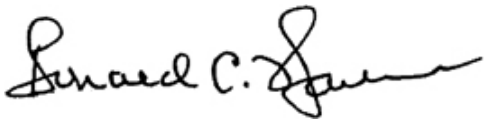
By: 
Lee R. Wrubel, M.D.
Managing Member


UTAKO K. HUDSON


CAROL J. WELDON

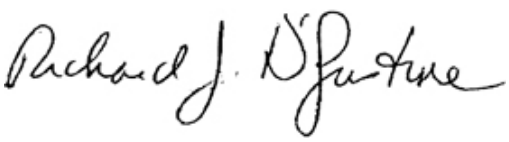

FRANK M. FISCHER

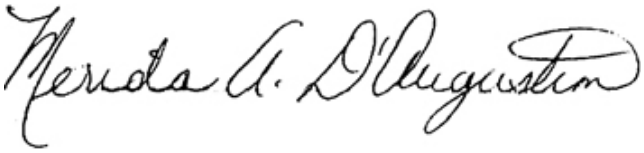

KAREN J. CASSIDY


DONALD C. HARRISON, M.D.


LOWELL S. LIFSCHULTZ

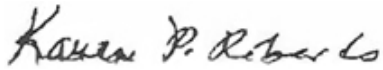

CHRISTIAN L. MAZZOLA, AS TRUSTEE FOR THE CHRISTIAN L. MAZZOLA REVOCABLE TRUST DATED JULY 29, 1993


RICHARD J. D'AUGUSTINE



MERIDA A. D'AUGUSTINE

MICHAEL D. HOOVEN

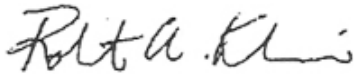


KAREN P. ROBARDS

RAYMOND W. OGLE

WILLIAM P. SANTAMORE, Ph.D.

STEWART H. GREENFIELD



ROBERT A. KLINE

RANDALL WOLF, M.D. AND AMY STERNSTEIN, HUSBAND AND WIFE

DUKE UNIVERSITY SPECIAL VENTURES FUND, INC.

By:
Name: David R. Shumate
Title: Vice President, Duke Management Company Authorized Agent

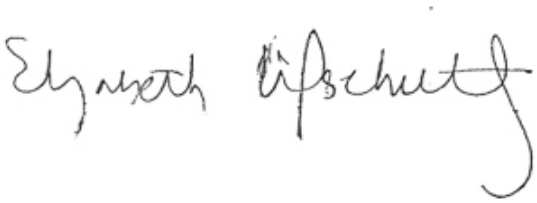
Neal Triplett, Assistant Director

GREENFIELD FAMILY, L.P.

By: 
Name:
Title:

O STREET CORPORATION

By: 
Name: Curtin Winsor
Title: President



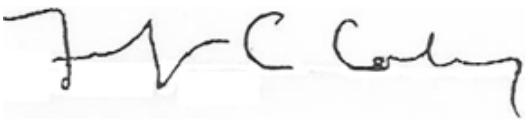
ELIZABETH H. LIFSCHULTZ

terms of the Company's Certificate of Incorporation and Bylaws, until the termination of this Agreement pursuant to Section

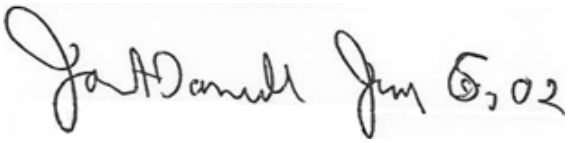
**"COMMON STOCKHOLDERS"**

PAUL A. BROOKE

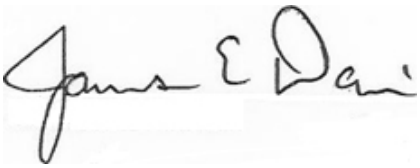
JAMES A. CHALDEKAS



FREDERIC C. COLMAN

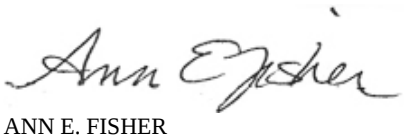


JAMES F. DANIELL, M.D.

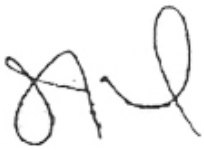


JAMES E. DAVIS

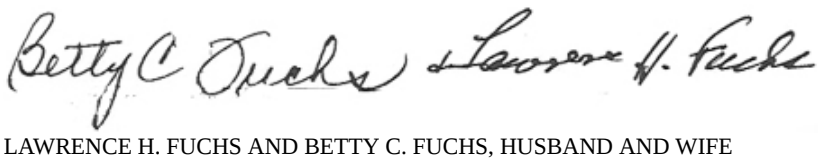
JOSEPH H. DAVIS



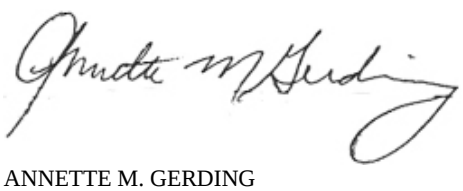
ANN E. FISHER



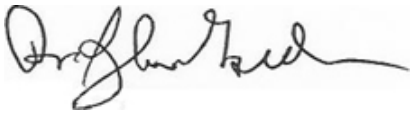
JOHN G. FREUND



LAWRENCE H. FUCHS AND BETTY C. FUCHS, HUSBAND AND WIFE

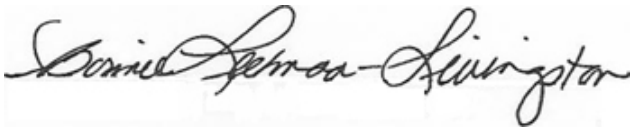


ANNETTE M. GERDING



DR. SYLVAN GOLDIN

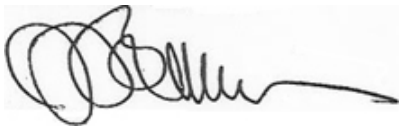
STEVEN L. HENDERSON



BONNIE LEETMAA-LIVINGSTON 5/28/02

THOMAS W. LUND

JOHN B. MARTIN, JR.

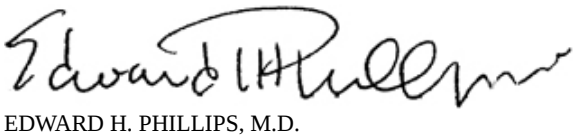


J. BARRY MCKERNAN, M.D.

SANFORD S. OSHER, M.D.

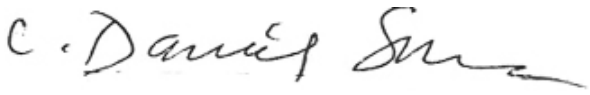
5/23/02

PHOTIOS PAULSON

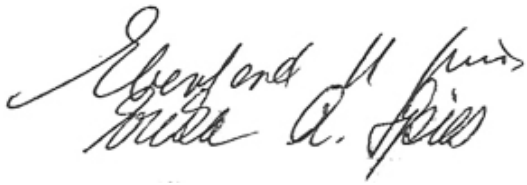


EDWARD H. PHILLIPS, M.D.

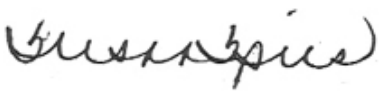
LEONARD PINCHUK



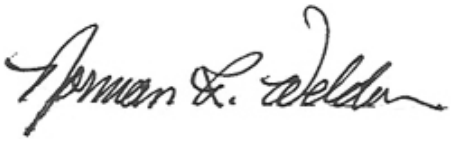
C. DANIEL SMITH, M.D.



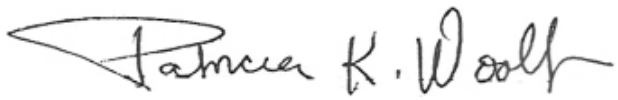
EBERHARD H. SPIES AND ERIKA A. SPIES, HUSBAND AND WIFE



SUSAN SPIES



NORMAN R. WELDON



PATRICIA K. WOOLF

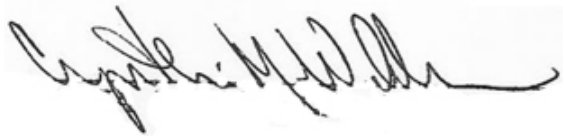
THOMAS D. WELDON, AS CUSTODIAN FOR MATTHEW T. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT

THOMAS D. WELDON, AS CUSTODIAN FOR ERIC R. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT

THOMAS D. WELDON, AS CUSTODIAN FOR CHRISTOPHER R. WELDON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT

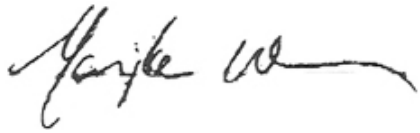
THOMAS D. WELDON, AS CUSTODIAN FOR ANDREW M. DODSON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT

R. DAVID WELDON



CYNTHLA M. WELDON, AS CUSTODIAN FOR MICHAEL J. WELDON UNDER THE OHIO UNIFORM TRANSFERS TO MINORS ACT

DAVID J. WELDON



MARIJKE L. WELDON

NEITHER THIS WARRANT, NOR THE CAPITAL STOCK TO BE ISSUED UPON EXERCISE HEREOF (NOR THE COMMON STOCK TO BE ISSUED UPON CONVERSION OF PREFERRED STOCK), HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (**"1933 SECURITIES ACT"**), OR QUALIFIED OR REGISTERED UNDER CALIFORNIA OR OTHER APPLICABLE SECURITIES LAWS (**"STATE SECURITIES LAWS"),** AND THIS WARRANT HAS BEEN, AND THE COMMON STOCK OR PREFERRED STOCK (AND THE COMMON STOCK TO BE ISSUED UPON CONVERSION OF SUCH PREFERRED STOCK) TO BE ISSUED UPON EXERCISE HEREOF WILL BE, ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR FOR RESALE IN CONNECTION WITH, ANY DISTRIBUTION THEREOF. NO SUCH SALE OR OTHER DISPOSITION MAY BE MADE WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 SECURITIES ACT AND COMPLIANCE WITH THE APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE ISSUER AND ITS COUNSEL, THAT SAID REGISTRATION IS NOT REQUIRED UNDER THE 1933 SECURITIES ACT AND THAT APPLICABLE STATE SECURITIES LAWS HAVE BEEN COMPLIED WITH.

Issued as of April 22, 2002

**ATRICURE, INC.**

**WARRANT**

This certifies that, for value received, _____ ("**Purchaser**"), whose address for notice is as listed on the signature page hereto, or any party to whom this Warrant is assigned in compliance with the terms hereof (Purchaser and any such assignee being hereinafter sometimes referenced as "**Holder**"), is entitled to subscribe for and purchase shares of the capital stock of Atricure, Inc., a Delaware corporation (the "**Company**"), determined as set forth below. Such right shall terminate upon the earlier of (i) one year after the date of the consummation of the initial public offering by Company of its Common Stock to the public generally pursuant to a registration statement in an underwritten offering or (ii) the seventh ($7^{th}$) anniversary after the issue date hereof, after which time, this Warrant shall expire.

This Warrant is one of a duly authorized series of Warrants of the Company (which Warrants are identical except for the variations necessary to express the name of the Holder, number, and Aggregate Price of each Warrant). The purchase price of this Warrant shall be Ninety Two Thousand One Hundred Dollars ($92,100.00) plus interest accrued pursuant to the Note. Capitalized terms used but not otherwise defined herein shall have the same meanings given such terms in the Note.

**ARTICLE I**
**DEFINITIONS**

**1.1 "Aggregate Price"** shall mean Ninety Two Thousand One Hundred Dollars ($92,100.00) plus interest accrued pursuant to the Note.

**1.2 "Change of Control Event"** shall have the meaning set forth in the Note.

**1.3 "Equity Financing"** shall be the first offering of the Company's equity that closes after the date of the original issue of this Warrant and on or before the date which is six (6) months from the date hereof, with cash proceeds to the Company of not less than Three Million Dollars ($3,000,000) (excluding conversion of the Notes issued pursuant to the Subscription Agreement and any other promissory notes issued by the Company) for payment of capital stock and shall exclude sales of capital stock to employees, officers, directors and consultants in connection with employee benefit plans and shall exclude amounts received from the sale of debt instruments convertible into the capital stock until such time as such instruments are converted into capital stock.

**1.4 "Financing Units"** means units of the Company's equity issued in the Equity Financing.

**1.5 "Maturity Date"** shall have the meaning set forth in the Note.

**1.6 "Note"** means the Convertible Promissory Note, dated an even date herewith, issued to Purchaser pursuant to the Subscription Agreement.

**1.7 "Preferred Stock"** shall mean shares of the Company's Series A Stock or any other series or class of preferred stock of the Company, including if applicable, the Financing Units.

**1.8 "Series A Stock"** shall mean shares of the Company's Series A Preferred Stock.

**1.9 "Subscription Agreement"** shall mean the Subscription Agreement by and among the Company and the Purchaser and other purchasers named therein, dated an even date herewith, under which this Warrant and the Note are issued.

**1.10 "Warrant Price"** shall mean, as adjusted herein: (i) in the case of an Equity Financing, the lowest per unit price of the Financing Units sold in the Equity Financing; (ii) in the case of a Change of Control Event occurring prior to the date which is six (6) months from the date hereof, one dollar and fifty cents ($1.50) per share; and (iii) in the case of the Maturity Date which occurs six (6) months after the date hereof without the Company having an Equity Financing or Change of Control Event on or prior to such date, sixty-three cents ($0.63) per share.

**1.11 "Warrant Stock"** shall mean the Company's Common Stock, Series A Stock or Financing Units. In the event of an Equity Financing, the Warrant Stock shall be Financing Units; in the event of a Change of Control Event prior to the date which is six (6) months from the date hereof, the Warrant Stock shall be the Company's Common Stock; and in the event the Maturity Date occurs on the date which is six (6) months from the date hereof and an Equity Financing or Change of Control Event has not occurred on or prior to such date, the Warrant Stock shall be Series A Stock.

## ARTICLE II
## EXERCISE AND PAYMENT

**2.1 Cash Exercise**. The purchase rights represented by this Warrant may be exercised by Holder, in whole or in part, by the surrender of this Warrant at the principal office of the Company, located at the address set forth on the signature page hereof, accompanied by the form of Notice of Cash Exercise attached hereto as Exhibit "A-l," and by the payment to the Company, by cash or by certified, cashier's or other check acceptable to the Company, of an amount equal to the aggregate Warrant Price of the shares of Warrant Stock being purchased.

**2.2 Net Issue Exercise**. In lieu of exercising this Warrant pursuant to Section 2.1, Holder may elect to receive shares of Warrant Stock equal to the value of this Warrant determined in the manner described below (or of any portion thereof remaining unexercised) by surrender of this Warrant at the principal office of the Company together with the form of Notice of Cashless Exercise attached hereto as Exhibit "A-2," in which event the Company shall issue to Holder a number of shares of the Company's Warrant Stock computed using the following formula:

$$X=\frac{Y(A-B)}{A}$$

Where X = the number of shares of Warrant Stock to be issued to Holder (on the date of such calculation).

Y = the number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = the fair market value of one share of the Company's Warrant Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

**2.3 Fair Market Value**. For purposes of this Article II, fair market value of one unit or share of the Company's Warrant Stock shall mean the fair market value of that number of

shares of Common Stock which are then receivable upon conversion of one share of Warrant Stock, with the valuation of such Common Stock being as set forth below:

(i) The average of the closing bid and asked prices of the Common Stock quoted in the Over-The-Counter Market Summary, the last reported sale price of the Common Stock or the closing price quoted on the Nasdaq National Market System (**"NMS"**) or on any exchange on which the Common Stock is listed, whichever is applicable, as published in the Western Edition of The Wall Street Journal for the ten (10) trading days prior to the date of determination of fair market value, or if the Company's stock has been listed or on the NMS for fewer than ten (10) days, such fewer number of days; or

(ii) If the Common Stock is not traded Over-The-Counter, on the NMS or on an exchange, the per share fair market value of the Warrant Stock shall be as determined by mutual agreement of the Company and the Holder; *provided, however* that if such agreement cannot be reached within twenty (20) calendar days, such value shall be determined by an independent appraiser appointed in good faith by the Company's Board of Directors. The cost of such appraisal shall be borne by the Company.

**2.4 Automatic Conversion**. If the Company's Preferred Stock has been automatically converted into Common Stock pursuant to the terms and conditions of the Preferred Stock, this Warrant shall automatically convert into a right to purchase Common Stock, pursuant to the formulas set forth in Section 2.3 above, and the number of shares of Common Stock to which the Holder shall be entitled to purchase shall be multiplied by that number of shares of Common Stock which were received upon conversion of one share of Preferred Stock at the time of such automatic conversion.

**2.5 Stock Certificates**. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of Warrant Stock so purchased shall be delivered to Holder within a reasonable time and, unless this Warrant has been fully exercised or has expired, a new Warrant representing the remaining unexercised portion of this Warrant shall also be issued to Holder at such time. Notwithstanding the date of the delivery of the certificate(s) for the Warrant Stock, the person in whose name the certificate(s) for such Warrant Stock are to be issued shall be deemed to have become a stockholder of record on the next succeeding day on which the transfer books are open after the date of the appropriate Notice of Exercise is received by the Company.

**2.6 Stock Fully Paid; Reservation of Shares**. The Company covenants and agrees that all Warrant Stock which may be issued upon the exercise of the rights represented by this Warrant (and all Common Stock receivable upon conversion of Preferred Stock issued upon exercise of this Warrant) will, upon issuance, be fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof (excluding taxes based on the income of Holder). The Company further covenants and agrees that during the period within which the rights represented by this Warrant may be exercised, the Company will at all times have authorized and reserved for issuance a sufficient number of shares of its Preferred Stock (and

sufficient shares of Common Stock for conversion thereof) or other securities as would be required upon the full exercise of the rights represented by this Warrant (including conversion of all Preferred Stock issuable hereunder).

**2.7 Fractional Shares**. No fractional share of Warrant Stock will be issued in connection with any exercise hereof; in lieu of a fractional share upon complete exercise hereof, the Company shall round up to the next full share.

**2.8 Automatic Exercise**. To the extent this Warrant is not previously exercised, and if the fair market value of one share of the Company's Warrant Stock is greater than the Warrant Price, as adjusted, this Warrant shall be deemed automatically exercised in accordance with Section 2.2 hereof (even if not surrendered) immediately before its expiration. For purposes of such automatic exercise, the fair market value of one share of the Company's Warrant Stock upon such expiration shall be the fair market value determined pursuant to Section 2.3 above. To the extent this Warrant or any portion thereof is deemed automatically exercised pursuant to this Section 2.8, the Company agrees to notify Holder within a reasonable period of time of the number of shares of the Company's Warrant Stock, if any, Holder is to receive by reason of such automatic exercise.

**2.9 Issuance of Substitute Warrant**. Within thirty (30) calendar days after the first to occur of (i) an Equity Financing, (ii) Change of Control Event or (iii) the date which is six (6) months from the date hereof, the Company shall issue to the Holder a new warrant of like form, tenor and effect, as a substitute for this Warrant, which sets forth the class of Warrant Stock for which this Warrant is exercisable and the number of shares of Warrant Stock subject to this Warrant. Upon the issuance of such substitute warrant, this Warrant shall be of no further force or effect, and shall be surrendered by Holder to the Company and cancelled.

## ARTICLE III
## CERTAIN ADJUSTMENTS OF NUMBER OF SHARES PURCHASABLE AND WARRANT PRICE

The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the happening of certain events, as follows:

**3.1 Reclassification, Consolidation or Merger**. In case of: (i) any reclassification or change of outstanding securities issuable upon exercise of this Warrant; (ii) any consolidation or merger of the Company with or into another corporation (other than a merger with another corporation in which the Company is a continuing corporation and which does not result in any reclassification, change or exchange of outstanding securities issuable upon exercise of this Warrant); or (iii) any sale or transfer to another corporation of all, or substantially all, of the property of the Company, then, and in each such event, the Company or such successor or purchasing corporation, as the case may be, shall execute a new Warrant of like form, tenor and

effect and which will provide that Holder shall have the right to exercise such new Warrant and purchase upon such exercise, in lieu of each share of Preferred Stock theretofore issuable upon exercise of this Warrant, the kind and amount of securities, money and property receivable upon such reclassification, change, consolidation, merger, sale or transfer by a holder of one share of Warrant Stock issuable upon exercise of this Warrant had this Warrant been exercised immediately prior to such reclassification, change, consolidation, merger, sale or transfer. Such new Warrant shall be as nearly equivalent in all substantive respects as practicable to this Warrant and the adjustments provided in this Article III and the provisions of this Section 3.1, shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales and transfers.

**3.2 Subdivision or Combination of Shares**. If the Company shall at any time while this Warrant remains outstanding and less than fully exercised: (i) divide its Warrant Stock, the Warrant Price shall be proportionately reduced; or (ii) shall combine shares of its Warrant Stock, the Warrant Price shall be proportionately increased.

**3.3 Other Action Affecting Warrant Stock**. If the Company takes any action affecting its Warrant Stock after the date hereof (including dividends and distributions), other than an action described in any of Sections 3.1 and 3.2 hereof, which would have an adverse effect upon Holder's rights hereunder, the Warrant Price shall be adjusted downward in such manner and at such time as the Board of Directors of the Company shall in good faith determine to be equitable under the circumstances.

**3.4 Time of Adjustments to the Warrant Price**. All adjustments to the Warrant Price and the number of shares purchasable hereunder, unless otherwise specified herein, shall be effective as of the earliest of:

(i) the date of issue of the security causing the adjustment;

(ii) the date of sale of the security causing the adjustment;

(iii) the effective date of a division or combination of shares; and

(iv) the record date of any action of holders of any class of the Company's capital stock taken for the purpose of entitling shareholders to receive a distribution or dividend payable in equity securities, provided that such division, combination, distribution or dividend actually occurs.

**3.5 Notice of Adjustments**. In each case of an adjustment in the Warrant Price and the number of shares purchasable hereunder, the Company, at its expense, shall cause the Chief Financial Officer of the Company to compute such adjustment and prepare a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based. The Company shall promptly mail a copy of each such certificate to Holder pursuant to Section 6.8 hereof.

**3.6 Duration of Adjusted Warrant Price**. Following each adjustment of the Warrant Price, such adjusted Warrant Price shall remain in effect until a further adjustment of the Warrant Price.

**3.7 Adjustments to Conversion Rate**. The Holder upon purchase of Preferred Stock pursuant to this Warrant, shall be entitled to all adjustments to Conversion Price made available to holders of the Preferred Stock from and after the first date of first issue of a share of Preferred Stock by the Company.

## ARTICLE IV
## TRANSFER, EXCHANGE AND LOSS

**4.1 Transfer**. This Warrant is transferable on the books of the Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed, subject to compliance with federal and state securities laws. The Company shall issue and deliver to the transferee a new Warrant or Warrants representing the Warrants so transferred. Upon any partial transfer, the Company will issue and deliver to Holder a new Warrant or Warrants with respect to the Warrants not so transferred. Notwithstanding the foregoing, Holder shall not be entitled to transfer a number of shares or an interest in this Warrant representing less than five percent (5%) of the aggregate shares initially covered by this Warrant (as presently constituted, with appropriate adjustment being made in the event of stock splits, combinations, reorganizations and the like occurring after the issue date hereof). Any transferee shall be subject to the same restrictions on transfer with respect to this Warrant as the Purchaser.

**4.2 Securities Laws**. Upon any issuance of shares of Warrant Stock upon exercise of this Warrant (or of Common Stock upon conversion of Preferred Stock issued upon exercise of this Warrant), it shall be the Company's responsibility to comply with the requirements of: (i) the Securities Act of 1933; (ii) the Securities Exchange Act of 1934, as amended; (iii) any applicable listing requirements of any national securities exchange; (iv) any state securities regulation or "Blue Sky" laws; and (v) requirements under any other law or regulation applicable to the issuance or transfer of such shares. In connection with the issuance to Purchaser of this Warrant, Purchaser agrees to execute an investment intent letter or purchase agreement in such form as reasonably requested by the Company and its counsel and as may be required to comply with federal and applicable state securities laws. If required by the Company, in connection with each issuance of shares of Warrant Stock upon exercise of this Warrant, the Holder will give: (A) assurances in writing, satisfactory to the Company, that such shares are not being purchased with a view to the distribution thereof in violation of applicable laws, (B) sufficient information, in writing, to enable the Company to rely on exemptions from the registration or qualification requirements of applicable laws, if available, with respect to such exercise, and (C) its cooperation to the Company in connection with such compliance.

**4.3 Exchange**. This Warrant is exchangeable at the principal office of the Company for Warrants which represent, in the aggregate, the Holder's rights to purchase the number of

shares of Warrant Stock covered by this Warrant at the Warrant Price; each new Warrant to represent the right to purchase the number of shares of Warrant Stock covered by this Warrant as Holder shall designate at the time of such exchange. Each new Warrant shall be identical in form and content to this Warrant, except for appropriate changes in the number of shares of Warrant Stock covered thereby, the percentage stated in Section 4.1 above, and any other changes which are necessary in order to prevent the Warrant exchange from changing the respective rights and obligations of the Company and the Holder as they existed immediately prior to such exchange.

**4.4 Loss or Mutilation**. Upon receipt by the Company of evidence satisfactory to it of the ownership of, and the loss, theft, destruction or mutilation of, this Warrant and (in the case of loss, theft, or destruction) of indemnity satisfactory to it, and (in the case of mutilation) upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant.

## ARTICLE V
## HOLDER RIGHTS

**5.1 No Shareholder Rights Until Exercise**. No Holder hereof, solely by virtue hereof, shall be entitled to any rights as a shareholder of the Company. Holder shall have all rights of a shareholder with respect to securities purchased upon exercise hereof as of the date set forth in Section 2, including but not limited to, antidilution protection, liquidation preferences, registration rights, and information rights, if applicable.

## ARTICLE VI
## MISCELLANEOUS

**6.1 Governmental Approvals**. The Company will from time to time take all action which may be necessary to obtain and keep effective any and all permits, consents and approvals of governmental agencies and authorities and securities acts filings under federal and state laws, which may be or become requisite in connection with the issuance, sale, and delivery of this Warrant, and the issuance, sale and delivery of the Warrant Stock or other securities or property issuable or deliverable upon exercise of this Warrant.

**6.2 GOVERNING LAWS**. IT IS THE INTENTION OF THE PARTIES HERETO THAT EXCEPT AS SET FORTH BELOW, THE INTERNAL LAWS OF THE STATE OF DELAWARE, U.S.A. (IRRESPECTIVE OF ITS CHOICE OF LAW PRINCIPLES) SHALL GOVERN THE VALIDITY OF THIS WARRANT, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES HERETO.

**6.3 Binding Upon Successors and Assigns.** Subject to, and unless otherwise provided in, this Warrant, each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

**6.4 Severability.** If any one or more provisions of this Warrant, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provisions of this Warrant with valid and enforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

**6.5 Default, Amendment and Waivers.** This Warrant may be amended upon the written consent of the Company and the holders in the aggregate of the right to purchase a majority of the number of unexercised shares of Warrant Stock covered by the Warrant initially issued by the Company pursuant to the Subscription Agreement. The waiver by a party of any breach hereof for default in payment of any amount due hereunder or default in the performance hereof shall not be deemed to constitute a waiver of any other default or any succeeding breach or default. The failure to cure any breach of any term of this Warrant within ten (10) days of written notice thereof shall constitute an event of default under this Warrant.

**6.6 No Waiver.** The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

**6.7 Attorneys' Fees.** Should suit be brought to enforce or interpret any part of this Warrant, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal). The prevailing party shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover its costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining if a party is entitled to recover costs or attorneys' fees.

**6.8 Notices.** Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Warrant, each such communication shall be in writing and shall be effective only if it is delivered by personal service or mailed, United States certified mail, postage prepaid, return receipt requested, addressed as set forth on the signature page hereof. Such communications shall be effective when they are received by the addressee thereof; but if sent by certified mail in the manner set forth above, they shall be effective three (3) business days after being deposited in the United States mail. Any party may change its address for such communications by giving notice thereof to the other party in conformity with this Section.

**6.9 Time.** Time is of the essence of this Warrant.

**6.10 Construction of Agreement.** A reference in this Warrant to any Section shall include a reference to every Section the number of which begins with the number of the Section to which reference is specifically made (*e.g.*, a reference to Section 3 shall include a reference to Sections 3.5 and 3.7). The titles and headings herein are for reference purposes only and shall not in any manner affect the interpretation of this Warrant.

**6.11 No Endorsement.** Holder understands that no federal or state securities administrator has made any finding or determination relating to the fairness of investment in the Company or purchase of the Warrant Stock hereunder and that no federal or state securities administrator has recommended or endorsed the offering of securities by the Company hereunder.

**6.12 Pronouns.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

**6.13 Further Assurances.** Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Warrant.

**ATRICURE, INC.**

By: _____

Name:
Title:

Address: 6033 Schumacher Park Drive
West Chester, Ohio 45069-4812

**HOLDER:**

By: _____

Name: _____

Title: _____

Address: _____

_____

**EXHIBIT "A-1"**

**NOTICE OF EXERCISE OF WARRANT**
**BY CASH PAYMENT OF WARRANT PRICE**

_____
(Date)

Atricure, Inc.
6033 Schumacher Park Drive
West Chester, Ohio 45069-4812
Attention: President

| | |
|---|---|
| Aggregate Price of Warrant Before Exercise: | $_____ |
| Aggregate Price Being Exercised: | $_____ |
| Warrant Price per share: | $_____ |
| Number of Shares of Warrant Stock to be Issued Under this Notice: | _____ |
| Remainder Aggregate Price (if any) After Issuance: | _____ |

**CASH EXERCISE**

Ladies and Gentlemen:

The undersigned registered Holder of the Warrant delivered herewith (the "**Warrant**"), hereby irrevocably exercises such Warrant for, and purchases thereunder, shares of the _____ of Atricure, Inc., a Delaware corporation, as provided below. Capitalized terms used herein, unless otherwise defined herein, shall have the meanings given in the Warrant.

The portion of the Aggregate Price (as defined in the Warrant) to be applied toward the purchase of _____ Stock pursuant to this Notice of Exercise is $_____, thereby leaving a remainder Aggregate Price (if any) equal to $ _____. Such exercise shall be pursuant to the cash exercise provisions of Section 2.1 of the Warrant. Therefore, Holder makes payment with this Notice of Exercise by way of check payable to the Company in the amount of $_____. Such check is payment in full under the Warrant for shares of _____ based upon the Warrant Price of $_____ per share, as currently in effect under the Warrant.

Holder requests that the certificates for the purchased shares of _____ be issued in the name of and delivered to _____, _____, respectively. To the extent the foregoing exercise is for less than the full Aggregate Price of the Warrant, a replacement Warrant representing the remainder of the Aggregate Price (and otherwise of like form, tenor and effect) shall be delivered to Holder along with the share certificate evidencing the _____ Stock issued in response to this Notice of Exercise.

**HOLDER:**

By: _____

Name: _____

Title: _____

**NOTE**

The execution to the foregoing Notice of Exercise must exactly correspond to the name of the Holder as typed on Warrant.

**EXHIBIT "A-2"**

**NOTICE OF EXERCISE OF WARRANT**
**PURSUANT TO NET ISSUE ("CASHLESS") EXERCISE PROVISIONS**

_____
(Date)

Atricure, Inc.
6033 Schumacher Park Drive
West Chester, Ohio 45069-4812
Attention: President

| | |
|---|---|
| Aggregate Price of Warrant Before Exercise: | $_____ |
| Aggregate Price Being Exercised: | $_____ |
| Warrant Price per share: | $_____ |
| Number of Shares of Warrant Stock to be Issued Under this Notice: | _____ |
| Remainder Aggregate Price (if any) After Issuance: | _____ |

**CASHLESS EXERCISE**

Ladies and Gentlemen:

The undersigned, registered Holder of the Warrant delivered herewith ("**Warrant**"), hereby irrevocably exercises such Warrant for, and purchases thereunder, shares of the _____ of Atricure, Inc., a Delaware corporation, as provided below. Capitalized terms used herein, unless otherwise defined herein, shall have the meanings given in the Warrant.

The portion of the Aggregate Price (as defined in the Warrant) to be applied toward the purchase of _____ Stock pursuant to this Notice of Exercise is $_____, thereby leaving a remainder Aggregate Price (if any) equal to $_____. Such exercise shall be pursuant to the net issue exercise provisions of Section 2.2 of the Warrant; therefore, Holder makes no payment with this Notice of Exercise. The number of shares to be issued pursuant to this exercise shall be determined by reference to the formula in Section 2.2 of the Warrant which, by reference to Section 2.3, requires the use of the current per share fair market value of the Company's Common Stock. The current fair market value of one share of the

Company's Common Stock shall be determined in the manner provided in Section 2.3, which amount has been determined or agreed to by Holder and the Company to be $_____, which figure is acceptable to Holder for calculations of the number of shares of _____ issuable pursuant to this Notice of Exercise.

Holder requests that the certificates for the purchased shares of _____ be issued in the name of and delivered to _____. To the extent the foregoing exercise is for less than the full Aggregate Price of the Warrant, a replacement Warrant representing the remainder of the Aggregate Price (and otherwise of like form, tenor and effect) shall be delivered to Holder along with the share certificate evidencing the _____ Stock issued in response to this Notice of Exercise.

**HOLDER:**

By: _____

Name: _____

Title: _____

**NOTE**

The execution to the foregoing Notice of Exercise must exactly correspond to the name of the Holder as typed on Warrant.

**EXHIBIT 4.6**

NEITHER THIS WARRANT NOR THE COMMON STOCK TO BE ISSUED UPON EXERCISE HEREOF HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR QUALIFIED OR REGISTERED UNDER CALIFORNIA OR ANY OTHER APPLICABLE STATE SECURITIES LAWS, AND NEITHER THIS WARRANT NOR SUCH COMMON STOCK MAY BE SOLD OR TRANSFERRED UNLESS SUCH SALE OR TRANSFER IS IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE 1933 ACT AND APPLICABLE STATE SECURITIES LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER THE 1933 ACT AND THAT APPLICABLE STATE SECURITIES LAWS HAVE BEEN COMPLIED WITH.

COMMON STOCK PURCHASE WARRANT

Warrant No. _____ Number of Shares: 209,790

**ATRICURE, INC.**

Effective as of March 8, 2005

Void after March 8, 2012

**1. Issuance**. This Common Stock Purchase Warrant (the "*Warrant*") is issued to LIGHTHOUSE CAPITAL PARTNERS V, L.P. by ATRICURE, INC., a Delaware corporation (hereinafter with its successors called the "*Company*").

**2. Purchase Price; Number of Shares**. The registered holder of this Warrant (the "*Holder*"), commencing on the date hereof, is entitled upon surrender of this Warrant with the subscription form annexed hereto duly executed, at the principal office of the Company, to purchase from the Company at a price per share of $2.97 (the "*Purchase Price*"), 209,790 fully paid and nonassessable shares of Common Stock, $0.0001 par value, of the Company (the "*Common Stock*").

Until such time as this Warrant is exercised in full or expires, the Purchase Price and the securities issuable upon exercise of this Warrant are subject to adjustment as hereinafter provided. The person or persons in whose name or names any certificate representing shares of Common Stock is issued hereunder shall be deemed to have become the holder of record of the shares represented thereby as at the close of business on the date this Warrant is exercised with respect to such shares, whether or not the transfer books of the Company shall be closed.

**3. Payment of Purchase Price**. The Purchase Price may be paid (a) in cash or by check, (b) by the surrender by the Holder to the Company of any promissory notes or other obligations issued by the Company, with all such notes and obligations so surrendered being credited against the Purchase Price in an amount equal to the principal amount thereof plus accrued interest to the date of surrender, or (c) by any combination of the foregoing.

**4. Net Issue Election**. The Holder may elect to receive, without the payment by the Holder of any additional consideration, shares of Common Stock equal to the value of this

Warrant or any portion hereof by the surrender of this Warrant or such portion to the Company, with the net issue election notice annexed hereto duly executed, at the principal office of the Company. Thereupon, the Company shall issue to the Holder such number of fully paid and nonassessable shares of Common Stock as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

where: X = the number of shares of Common Stock to be issued to the Holder pursuant to this **Section 4**.

Y = the number of shares of Common Stock covered by this Warrant in respect of which the net issue election is made pursuant to this **Section 4**.

A = the Fair Market Value (defined below) of one share of Common Stock as determined at the time the net issue election is made pursuant to this **Section 4**.

B = the Purchase Price in effect under this Warrant at the time the net issue election is made pursuant to this **Section 4**.

"Fair Market Value" of a share of Common Stock as of the date that the net issue election is made (the "Determination Date") shall mean:

**(i)** If the net issue election is made in connection with and contingent upon the closing of the sale of the Company's Common Stock to the public in a public offering pursuant to a Registration Statement under the 1933 Act (a "Public Offering"), and if the Company's Registration Statement relating to such Public Offering ('"Registration Statement") has been declared effective by the Securities and Exchange Commission, then the initial "Price to Public" specified in the final prospectus with respect to such offering.

**(ii)** If the net issue election is not made in connection with and contingent upon a Public Offering, then as follows:

**(a)** If traded on a securities exchange or the Nasdaq National Market, the fair market value of the Common Stock shall be deemed to be the average of the closing or last reported sale prices of the Common Stock on such exchange or market over the five day period ending five trading days prior to the Determination Date;

**(b)** If otherwise traded in an over-the-counter market, the fair market value of the Common Stock shall be deemed to be the average of the closing ask prices of the Common Stock over the five day period ending five trading days prior to the Determination Date; and

**(c)** If there is no public market for the Common Stock, then fair market value shall be determined in good faith by the Company's Board of Directors.

**5. Partial Exercise**. This Warrant may be exercised in part, and the Holder shall be entitled to receive a new warrant, which shall be dated as of the date of this Warrant, covering the number of shares in respect of which this Warrant shall not have been exercised.

**6. Fractional Shares**. In no event shall any fractional share of Common Stock be issued upon any exercise of this Warrant. If, upon exercise of this Warrant in its entirety, the Holder would, except as provided in this Section 6, be entitled to receive a fractional share of Common Stock, then the Company shall issue the next higher number of full shares of Common Stock, issuing a full share with respect to such fractional share.

**7. Expiration Date; Automatic Exercise**. This Warrant shall expire upon the earlier of (i) the close of business on March 8, 2012, or (ii) the close of business on the date that is one year after the date of the consummation of an initial public offering by the Company of its Common Stock to the public generally pursuant to a registration statement in an underwritten offering, and shall be void thereafter. Notwithstanding the foregoing, this Warrant shall automatically be deemed to be exercised in full pursuant to the provisions of Section 4 hereof, without any further action on behalf of the Holder, immediately prior to the time this Warrant would otherwise expire pursuant to the preceding sentence if the Fair Market Value of one share of the Common Stock is greater than the Purchase Price.

**8. Reserved Shares; Valid Issuance**. The Company covenants that it will at all times from and after the date hereof reserve and keep available such number of its authorized shares of Common Stock, free from all preemptive or similar rights therein, as will be sufficient to permit the exercise of this Warrant in full. The Company further covenants that such shares as may be issued pursuant to such exercise will, upon issuance, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof.

**9. Stock Splits and Dividends**. If after the date hereof the Company shall subdivide the Common Stock, by split-up or otherwise, or combine the Common Stock, or issue additional shares of Common Stock in payment of a stock dividend on the Common Stock, the number of shares of Common Stock issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination, and the Purchase Price shall forthwith be proportionately decreased in the case of a subdivision or stock dividend, or proportionately increased in the case of a combination.

**10. Additional Rights**. The other rights applicable to the Common Stock of the Company are set forth in the Amended and Restated Certificate of Incorporation, as amended from time to time (the "Articles"), a true and complete copy in its current form which is attached hereto as Exhibit A. Such rights shall not be restated, amended or modified in any manner which affects the Holder differently than the holders of Common Stock without such Holder's prior written consent. The Company shall promptly provide the Holder hereof with any restatement, amendment or modification to the Articles promptly after the same has been made.

**11. Mergers and Reclassifications**. If after the date hereof the Company shall enter into any Reorganization (as hereinafter defined), then, as a condition of such

Reorganization, lawful provisions shall be trade, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder, so that the Holder shall thereafter have the right to purchase, at a total price not to exceed that payable upon the exercise of this Warrant in full, the kind and amount of shares of stock and other securities and property receivable upon such Reorganization by a holder of the number of shares of Common Stock which might have been purchased by the Holder immediately prior to such Reorganization, and in any such case appropriate provisions shall be made with respect to the rights and interest of the Holder to the end that the provisions hereof (including without limitation, provisions for the adjustment of the Purchase Price and the number of shares issuable hereunder and the provisions relating to the net issue election) shall thereafter be applicable in relation to any shares of stock or other securities and property thereafter deliverable upon exercise hereof. For the purposes of this Section 11, the term "Reorganization" shall include without limitation any reclassification, capital reorganization or change of the Common Stock (other than as a result of a subdivision, combination or stock dividend provided for in Section 9 hereof), or any consolidation of the Company with, or merger of the Company into, another corporation or other business organization (other than a merger in which the Company is the surviving corporation and which does not result in any reclassification or change of the outstanding Common Stock), or any sale or conveyance to another corporation or other business organization of all or substantially all of the assets of the Company.

**12. Certificate of Adjustment**. Whenever the Purchase Price is adjusted, as herein provided, the Company shall promptly deliver to the Holder a certificate of the Company's chief financial officer setting forth the Purchase Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

**13. Notices of Record Date, Etc**. In the event of:

**(a)** any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase, sell or otherwise acquire or dispose of any shares of stock of any class or any other securities or property, or to receive any other right;

**(b)** any reclassification of the capital stock of the Company, capital reorganization of the Company, consolidation or merger involving the Company, or sale or conveyance of all or substantially all of its assets; or

**(c)** any voluntary or involuntary dissolution, liquidation or winding-up of the Company; then in each such event the Company will provide or cause to be provided to the Holder a written notice thereof. Such notice shall be provided at least twenty (20) business days prior to the date specified in such notice on which any such action is to be taken.

**14. Representations, Warranties and Covenants**. This Warrant is issued and delivered by the Company and accepted by each Holder on the basis of the following representations, warranties and covenants made by the Company:

**(a)** The Company has all necessary authority to issue, execute and deliver this Warrant and to perform its obligations hereunder. This Warrant has been duly authorized issued, executed and delivered by the Company and is the valid and binding obligation of the Company, enforceable in accordance with its terms.

**(b)** The shares of Common Stock issuable upon the exercise of this Warrant have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable.

**(c)** The issuance, execution and delivery of this Warrant do not, and the issuance of the shares of Common Stock upon the exercise of this Warrant in accordance with the terms hereof will not, (i) violate or contravene the Company's Articles or by-laws, or any law, statute, regulation, rule, judgment or order applicable to the Company, (ii) violate, contravene or result in a breach or default under any contract, agreement or instrument to which the Company is a party or by which the Company or any of its assets are bound or (iii) require the consent or approval of or the filing of any notice or registration with any person or entity.

**(d)** As long as this Warrant is, or any shares of Common Stock issued upon exercise of this Warrant are, issued and outstanding, the Company will provide to the Holder the financial and other information required to be provided to the Holder in accordance with Section 6.2 of that certain Loan and Security Agreement No. 4631 between the Company and Lighthouse Capital Partners V, L.P. dated as of March 8, 2005, provided, however, that the Holder's information rights will be available with respect to any shares of Common Stock issued upon exercise of this Warrant only (A) if and so long as they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction or (B) prior to the date such securities have been sold in a transaction exempt from the prospectus delivery requirements of the Securities Act so that all transfer restrictions and legends with respect thereto are removed upon consummation of such sale.

**(e)** So long as this Warrant has not terminated, Holder shall be entitled to receive such financial and other information as the Holder would be entitled to receive under the Company's Series B Convertible Preferred Stock Purchase Agreement dated as of June 6, 2002, if Holder were a holder of that number of shares issuable upon full exercise of this Warrant.

**(f)** As of the date hereof, the authorized capital stock of the Company consists of (i) 40,000,000 shares of Common Stock, of which 7,155,141 shares are issued and outstanding and 192,307 shares are reserved for issuance upon the exercise of this Warrant, (ii) 8,293,679 shares of Series A Preferred Stock, of which 8,293,579 are issued and outstanding shares, and (iii) 15,426,936 shares of Series B Preferred Stock, of which 14,552,097 are issued and outstanding shares. Attached hereto as Exhibit B is a capitalization table summarizing the capitalization of the Company. Once per calendar quarter, the Company will provide Holder with a current capitalization table indicating changes, if any, to the number of outstanding shares of common stock and preferred stock.

**15. Registration Rights**. The Company grants to the Holder all the rights of a "Holder" and an "Investor" (but not a "Major Investor") under the Company's Amended and

Restated Investors' Rights Agreement dated as of June 6, 2002 (the "Rights Agreement"), including, without limitation, the registration rights contained therein, and agrees to amend the Rights Agreement so that (i) the shares of Common Stock issuable upon exercise of this Warrant shall be "Registrable Securities," and (ii) the Holder shall be a "Holder" and an "Investor" (but not a "Major Investor") for all purposes of such Rights Agreement. The Holder agrees to execute and become subject to such Rights Agreement, including, without limitation, the Market Stand-Off Agreement contained therein, with respect to any of the Common Stock purchasable pursuant to the terms of this Warrant.

**16. Amendment**. The terms of this Warrant may be amended, modified or waived only with the written consent of the Holder.

**17. Representations and Covenants of the Holder**. This Common Stock Purchase Warrant has been entered into by the Company in reliance upon the following representations and covenants of the Holder, which by its execution hereof the Holder hereby confirms:

**(a) Investment Purpose.** The right to acquire Common Stock contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

**(b) Accredited Investor.** Holder is an "accredited investor" within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

**(c) Private Issue.** The Holder understands (i) that the Common Stock issuable upon exercise of the Holder's rights contained herein is not registered under fee 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 17.

**(d) Financial Risk.** The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

**18. Notices, Transfers, Etc**.

**(a)** Any notice or written communication required or permitted to be given to the Holder may be given by certified mail or delivered to the Holder at the address most recently provided by the Holder to the Company.

**(b)** Subject to compliance with applicable federal and state securities laws, this Warrant may be transferred by the Holder with respect to any or all of the shares purchasable hereunder. Upon surrender of this Warrant to the Company, together with the assignment notice annexed hereto duly executed, for transfer of this Warrant as an entirety by the Holder, the Company shall issue a new warrant of the same denomination to the assignee. Upon surrender of this Warrant to the Company, together with the assignment hereof properly endorsed, by the Holder for transfer with respect to a portion of the shares of Common Stock

purchasable hereunder, the Company shall issue a new warrant to the assignee, in such denomination as shall be requested by the Holder hereof, and shall issue to such Holder a new warrant covering the number of shares in respect of which this Warrant shall not have been transferred. Any transferee shall be subject to the same restrictions on transfer with respect to this Warrant as the Holder.

**(c)** In case this Warrant shall be mutilated, lost, stolen or destroyed, the Company shall issue a new warrant of like tenor and denomination and deliver the same (i) in exchange and substitution for and upon surrender and cancellation of any mutilated Warrant, or (ii) in lieu of any Warrant lost, stolen or destroyed, upon receipt of an affidavit of the Holder or other evidence reasonably satisfactory to the Company of the loss, theft or destruction of such Warrant.

**(d)** If required by the Company, in connection with each exercise and issuance of shares of Common Stock purchasable hereunder or in the connection with the transfer by the Holder to any transferee of this Warrant or any of the shares of Common Stock purchasable hereunder, the Holder or such transferee, as the case may be, will give (i) with respect to any exercise and issuance of shares of Common Stock, assurances in writing that the representations and covenants set forth in **Section 17** above remain true and a-e confirmed as of the date of such exercise, and (ii) with respect to any transfer of this Warrant or any of the shares of Common Stock purchasable hereunder, assurances in writing that the representations and covenants set forth in **Section 17** above are true with respect to such transferee and are confirmed and acknowledged by such transferee.

**19. No Impairment**. The Company will not, by amendment of its Articles or through any reclassification, capital reorganization, consolidation, merger, sale or conveyance of assets, dissolution, liquidation, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder.

**20. Governing Law**. The provisions and terms of this Warrant shall be governed by and construed in accordance with the internal laws of the State of Delaware.

**21. Successors and Assigns**. This Warrant shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Holder's successors, legal representatives and permitted assigns.

**22. Business Days**. If the last or appointed day for the taking of any action required of the expiration of any rights granted herein shall be a Saturday or Sunday or a legal holiday in California, then such action may be taken or right may be exercised on the next succeeding day which is not a Saturday or Sunday or such a legal holiday.

**23. Value**. The Company and the Holder agree that the value of this Warrant on the date of grant is $100.

**24. No Shareholder Rights Until Exercise**. No Holder hereof, solely by virtue of this Warrant, shall be entitled to any rights as a shareholder of the Company. Holder shall have

all rights of a shareholder with respect to securities purchased upon exercise hereof as of the next succeeding day on which the transfer books of the Company are open after the date on which a subscription form for such exercise, accompanied by appropriate payment of the Purchase Price or an appropriate Net Issue Election Notice, as the case may be, is received by the Company.

ATRICURE, INC.

By: _____

Name: _____

Title: _____

**Subscription**

To:_____ Date:_____

The undersigned hereby subscribes for _____ shares of Common Stock covered by this Warrant. The certificate(s) for such shares shall be issued in the name of the undersigned or as otherwise indicated below:

_____

Signature

_____

Name for Registration

_____

Mailing Address

**Net Issue Election Notice**

To:_____ Date:_____

The undersigned hereby elects under **Section 4** to surrender the right to purchase _____ shares of Common Stock pursuant to this Warrant. The certificate(s) for such shares issuable upon such net issue election shall be issued in the name of the undersigned or as otherwise indicated below:

_____

Signature

_____

Name for Registration

_____

Mailing Address

**Assignment**

For value received _____ hereby sells, assigns and transfers unto _____

_____

[Please print or typewrite name and address of Assignee] the within Warrant, and does hereby irrevocably constitute and appoint _____ its attorney to transfer the within Warrant on the books of the within named Company with full power of substitution on the premises.

Dated: _____

In the Presence of:

_____

**EXHIBIT A**

**Amended and Restated Certificate of Incorporation**

**See attached pages.**

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 10:00 AM 06/06/2002*
*020362819 – 3304415*

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATRICURE, INC.

AtriCure, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted proposing and declaring advisable that the Certificate of Incorporation of the Corporation be amended and that such amendment be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED: That the Board of Directors of the Corporation recommends and deems it advisable that the Certificate of Incorporation of the Corporation be amended by deleting Article IV thereof and substituting for said Article IV the new Article IV set forth on Exhibit A attached hereto; and

RESOLVED: That the aforesaid proposed amendment be submitted to the stockholders of the Corporation for their consideration; and

RESOLVED: That following the approval by the stockholders of the aforesaid amendment (the "Amendment") as required by law, the officers of the Corporation be, and they hereby are, and each of them hereby is, authorized and directed (i) to prepare, execute and file with the Secretary of State of the State of Delaware a Certificate of Amendment setting forth the Amendment in the form approved by the stockholders and (ii) to take any and all other actions necessary, desirable or convenient to give effect to the Amendment or otherwise to carry out the purposes of the foregoing Resolutions.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the Amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware, and written notice of the adoption of the Amendment has been given as provided in section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the Amendment was duly adopted in accordance with the applicable provisions of sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AtriCure, Inc. has caused this certificate to be signed by its President this 5th day of June 2002.

ATRICURE, INC.

By: /s/ Michael D. Hooven

Name: Michael D. Hooven
Title: President

EXHIBIT A

IV.

The total number of shares of all classes of stock which the Corporation has authority to issue is 63,720,615 shares, consisting of (i) 40,000,000 shares of Common Stock, par value $.0001 per share (the "Common Stock"), and (ii) 23,720,615 shares of Preferred Stock, par value $.0001 per share (the "Preferred Stock"), of which 8,293,679 shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 15,426,936 shares are designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock").

Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the sum of the number of shares of Common Stock then outstanding and the number of shares of Common Stock to be reserved pursuant to Subsection 2(1) below) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if converted basis).

The powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect of each class or series of stock of the Corporation shall be as follows:

Section 1. Liquidation Rights.

(a) Liquidation Payments.

(i) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary (a **"Liquidation Event"**), before any distribution or payment shall be made to the holders of any other stock of the Corporation, (a) the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $0.63 per share of Series A Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series A Preferred Stock; such price per share, the "Original Series A Per Share Price"), plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series A Preferred Stock with respect to such liquidation, dissolution or winding up, and (b) the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $1.43 per share of Series B Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series B Preferred Stock; such price per share, the "Original Series B Per Share Price") plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such liquidation, dissolution or winding up.

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock and Series B Preferred Stock of all amounts

distributable to them under this Subsection l(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Subsection l(a)(i).

No payment shall be made with respect to the Common Stock unless and until full payment has been made to the holders of the Preferred Stock of the amounts that they are entitled to receive under this Subsection l(a)(i).

(ii) After the payments described in Subsection l(a)(i) shall have been made in full to the holders of the Preferred Stock, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock, the remaining assets available for distribution shall be distributed among the holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock ratably in proportion to the number of shares of Common Stock then held by them or issuable to them upon conversion of the Series A Preferred Stock or Series B Preferred Stock then held by them. Such ratable distribution of the remaining assets shall continue until such time as (x) the holders of the Series A Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $1.89 per share (in the case of the cessation of participation of the holders of Series A Preferred Stock) and (y) the holders of the Series B Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $4.29 per share (in the case of the cessation of participation of the holders of Series B Preferred Stock). After such time as the holders of the Series A Preferred Stock and the Series B Preferred Stock have received distributions totaling $1.89 per share and $4.29 per share, respectively, all remaining assets shall be distributed ratably exclusively to the holders of the Common Stock (and not to any holders of Preferred Stock).

(iii) Upon conversion of shares of Preferred Stock into shares of Common Stock pursuant to Section 2 below, the holders of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(iv) The amounts payable with respect to shares of Preferred Stock under this Subsection l(a) are sometimes hereinafter referred to as “Liquidation Payments.”

(v) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder’s shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(b) Distributions Other than Cash. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation. The Corporation shall give prompt written notice of such valuation to each holder of Preferred Stock. Any securities shall be valued as follows:

(i) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the distribution;

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

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors; and

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be made with an appropriate discount from the market value determined as above to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(c) Merger as Liquidation, etc. The merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) in voting power of the capital stock of the surviving corporation, in which case the provisions of Subsection 2(h) shall apply), the closing of any transaction, or series of transactions, in which more than fifty percent (50%) of the voting power of the Corporation is sold to another corporation or entity or the sale of all, or substantially all, of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1, unless the holders of (i) at least sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock; and (ii) at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, each such series voting as separate classes, elect to the contrary, such election to be made by giving written notice thereof to the Corporation at least five (5) days before the effective date of such event. If such notice is given with respect to the Series A Preferred Stock and Series B Preferred Stock, the provisions of Subsection 2(h) shall apply to such Preferred Stock. Unless such election is made by the requisite holders of a series of Preferred Stock, any amounts received by the holders of such series of Preferred Stock as a result of such merger or consolidation shall be deemed to be applied toward, and all consideration received by the Corporation in such asset sale together with all other available assets of the Corporation shall be distributed toward, the Liquidation Payments in the order of preference set forth in Subsection l(a).

(d) Notice. Notice of any proposed liquidation , dissolution or winding up of the affairs of the Corporation (including any merger, consolidation, sale of capital stock or sale of

assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection l(c)), stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given to the holders of record of Preferred Stock not less than thirty (30) days prior to the payment date stated therein. Any holder of outstanding shares of Preferred Stock may waive notice required by this Subsection by a written document specifically indicating such waiver.

Section 2. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert; Conversion Price. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the principal executive office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price by the Conversion Price for such series, determined as hereinafter provided, in effect at the time of conversion. The "Issuance Price" shall be $0.63 per share for the Series A Preferred Stock and $1.43 per share for the Series B Preferred Stock. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Preferred Stock without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall initially be $0.63 per share of Common Stock for the Series A Preferred Stock and $1.43 per share of Common Stock for the Series B Preferred Stock subject, in each case, to adjustment in order to adjust the number of shares of Common Stock into which the Preferred Stock is convertible, as hereinafter provided. All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for such series of Preferred Stock, upon the closing of a firm commitment underwritten public offering (a "Qualified Public Offering") pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public at an offering price per share (prior to underwriter commissions and discounts) of not less than $4.29 (as adjusted to reflect any stock dividends, distributions, combinations, reclassifications or other like transactions effected by the Corporation in respect of its Common Stock) and with proceeds (after deduction of underwriters' commissions and expenses) to the Corporation of not less than $30,000,000.00 (in the event of which Qualified Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted the Preferred Stock until the closing of such Qualified Public Offering). Notwithstanding the foregoing, a registration relating solely to a transaction under Rule 145 under the Act (or any successor thereto) or to an employee benefit plan of the Corporation shall not be deemed to be a Qualified Public Offering causing the automatic conversion of the Preferred Stock into shares of Common Stock.

(ii) With respect to the Series A Preferred Stock, each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series A Preferred Stock, upon the written election of the holders of not less than sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock, voting as a separate class. With respect to the Series B Preferred Stock, each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series B Preferred Stock, upon the written election of the holders of not less than fifty percent (50%) of the then issued and outstanding shares of Series B Preferred Stock, voting as a separate class.

(c) Mechanics of Automatic Conversions. Upon the occurrence of either of the events specified in Subsection 2(b), the outstanding shares of the applicable series of Preferred Stock shall be converted automatically without any further action by the holders of shares of such series and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that all holders of shares of Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Subsection 2(b) triggering such conversion, including the date such event occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. On the Automatic Conversion Date, all rights with respect to the series of Preferred Stock so converted, shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such series of Preferred Stock has been converted, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of any Preferred Stock, the holders of such series of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, promptly at such office and in the holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock so surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. No fractional share of Common Stock shall be issued upon automatic conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock on the Automatic Conversion Date, as determined in good faith by the Corporation's Board of Directors.

(d) Mechanics of Optional Conversions. Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock pursuant to Subsection 2(a), the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Preferred Stock so converted, shall terminate, except any of the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted and cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock being converted to and including the time of conversion. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. No fractional share of Common Stock shall be issued upon optional conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair market value of one share of Common Stock, as determined in good faith by the Corporation's Board of Directors. The Corporation shall, as soon as practicable (but in no event later than five (5) business days) after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(i) If the conversion is in connection with an underwritten offering of securities pursuant to the Act the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) If the conversion is in connection with a liquidation described in Subsection l(c) above, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the consummation of the liquidation, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the consummation of the liquidation.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection 2(e), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the first date on which a share of Series B Preferred Stock was issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 2(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) all shares of Common Stock issuable upon conversion of, or as a dividend upon, shares of Preferred Stock;

(B) 4,500,000 shares of Common Stock reserved in connection with Options issued or to be issued under the Corporation's 2001 Stock Option Plan, as amended or restated, to officers, directors, employees, advisors or consultants of the Corporation, which number of reserved shares may be increased by the approval of at least a majority of the Corporation's Board of Directors (provided that such majority includes all directors elected exclusively by the holders of Preferred Stock in accordance with Section 5(b)(i) and 5(b)(ii) (the "Preferred Directors")); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(C) all shares of Common Stock issued or issuable to financial institutions, equipment lessors or other commercial lenders in connection with commercial credit agreements, equipment financings or other similar financings, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(D) all shares of Common Stock issued or issuable pursuant to agreements to license technology and/or provide sponsored research, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock; and

(E) for which adjustment to the Conversion Price for such series of Preferred Stock is made pursuant to Subsection 2(e)(vi).

(ii) No Adjustment of Conversion Price. Except as set forth in Subsection 2(e)(vi), no adjustment in the number of shares of Common Stock into which each share of Preferred Stock is convertible shall be made, by adjustment of the Conversion Price for such series of Preferred Stock, in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock (determined pursuant to Subsection 2(e)(v)) issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be

readjusted to reflect such decrease or increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(D) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be readjusted as if:

(I) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Subsection 2(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(E) no readjustment pursuant to this Section 2(e) shall have the effect of increasing the applicable Conversion Price for a series of Preferred Stock; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued with respect to the Preferred Stock:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution; or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the time of actual payment of such dividend or distribution.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(l) but excluding Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(2), which event is dealt with in Subsection 2(e)(vi)(l)), without consideration or for a consideration per share less than the Conversion Price for Series A Preferred Stock or Series B Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the then-existing Conversion Price for such affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price determined in accordance with the following formula:

$$NCP = \frac{P_1Q_1 + AC}{Q_1 + Q_2}$$

where:

| | | |
|---|---|---|
| NCP | = | New Conversion Price. |
| $P_1$ | = | Conversion Price in effect immediately prior to new issue. |
| $Q_1$ | = | Number of shares of Common Stock outstanding, or deemed to be outstanding as set forth below, immediately prior to such issue. |
| AC | = | The aggregate consideration received by the Corporation for the shares of Common Stock issued, or deemed to have been issued, in the subject transaction. |
| $Q_2$ | = | Number of shares of Common Stock issued, or deemed to have been issued, in the subject transaction. |

provided, that for the purpose of this Subsection 2(e)(iv), all shares of Common Stock issuable upon conversion of shares of Preferred Stock outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 2(e)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Subsection 2(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Corporation's Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 2(e)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event the Corporation shall be deemed to issue Additional Shares of Common Stock pursuant to Subsection 2(e)(iii)(2) in a stock dividend, stock distribution or subdivision, the Conversion

Price in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such deemed issuance, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in assets or in securities of the Corporation other than shares of Common Stock, and other than as otherwise adjusted in this Section 2, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of assets or securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such assets or securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(g) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a merger, consolidation, or sale of assets provided for below), then and in each such event the holder of Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by the holder of a number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets (other than a consolidation, merger or sale which is treated as a liquidation with respect to the Preferred Stock pursuant to Subsection 1(c)), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Corporation’s Board of Directors) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interest thereafter of the holders of such Preferred Stock, to the end

that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such Preferred Stock.

(i) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and mail to each affected holder of Preferred Stock, by first class mail, postage prepaid, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The certificate shall set forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of Preferred Stock affected.

(k) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock:

(A) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (i) and (ii) above; and

(B) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(l) Common Stock Reserved. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting

the conversion of the shares of Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Certain Taxes. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock.

(n) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(o) Good Faith. If any event occurs as to which in the reasonable opinion of the Board of Directors of the Corporation, in good faith, the other provisions of this Section 2 are not strictly applicable but the lack of any adjustment in the Conversion Price would not in the reasonable opinion of the Board fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, or if strictly applicable would not fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, then the Board of Directors of the Corporation shall cause the Corporation forthwith to make such adjustment, if any, to the Conversion Price, on a basis consistent with the basic intent and principles of this Section 2, as it in good faith considers necessary to preserve, without dilution, the Conversion Rights of all the holders of such Preferred Stock.

Section 3. Redemption Event.

(a) Upon request in writing to the Corporation by either (y) the holders of at least 66 2/3% in interest of the then issued and outstanding shares of Series A Preferred Stock, making a request as a separate class or (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, making a request as a separate class (the holders of such requesting series of Preferred Stock, the "Requesting Holders," and such request, an "Initial Redemption Request"), the Requesting Holders may cause the Corporation, on June 6, 2007 and on each of the first and second anniversaries thereof (each such date being referred to hereinafter as a "Redemption Date"), to redeem from all holders of such series of Preferred Stock, at the Original Series A Per Share Price or the Original Series B Per Share Price, as applicable, plus (i) any dividends declared or accrued but unpaid thereon, if any, and (ii) (x) if Series A Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series A Per Share Price from the date of May 25, 2001 through and until the applicable Redemption Date or (y) if Series B Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series B

Per Share Price from the date of June 6, 2002 through and until the applicable Redemption Date (the redemption price for the Series A Preferred Stock or Series B Preferred Stock, as applicable, the "Redemption Price"), the following respective portions of the number of issued and outstanding shares of Preferred Stock held by all holders of such series of Preferred Stock on the applicable Redemption Date:

| Redemption Date | Portion of Shares of Preferred Stock To Be Redeemed |
|---|---|
| June 6, 2007 | 33 1/3% |
| June 6, 2008 | 66 2/3% |
| June 6, 2009 | 100% |

(b) If any of the outstanding shares of a particular series of Preferred Stock are redeemed by the Corporation pursuant to Subsection 3(a) above, then all outstanding shares of such series of Preferred Stock must be redeemed by the Corporation in accordance with Subsection 3(a). However, if the funds of the Corporation legally available for redemption of Preferred Stock on any Redemption Date are insufficient to redeem the entire number of shares of Preferred Stock required under this Section 3 to be redeemed on such date, then those funds which are legally available will be used to redeem the maximum possible number of such shares of Preferred Stock ratably on the basis of the number of shares of Preferred Stock which would be redeemed on such date if the funds of the Corporation legally available therefor had been sufficient to redeem the entire number of shares of Preferred Stock required to be redeemed on such date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence. The portion of the Redemption Price due but unpaid on any Redemption Date shall accrue interest at the rate of fifteen percent (15%) per annum until paid, and any payments by the Corporation shall be applied first to such interest and then to reducing the amount of the unpaid Redemption Price.

(c) The Corporation shall provide notice of its receipt of an Initial Redemption Request, specifying the time, manner and place of redemption and the Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address for such holder as last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than thirty (30) days prior to the applicable Redemption Date. All holders of record of the series of Preferred Stock that did not make such Initial Redemption Request may nonetheless elect to become, together with the initial Requesting Holders, the "Requesting Holders" on such Redemption Date if written notice(s) is mailed to the Corporation, by first class or registered mail, postage prepaid, at least ten (10) days prior to applicable Redemption Date, which notice(s) includes the requisite percent of the then issued and outstanding shares of such series of Preferred Stock necessary to make an Initial Redemption Request pursuant to Subsection 3(a) above.

(d) Upon receipt by the Corporation of an Initial Redemption Request, the Corporation will become obligated to redeem on the applicable Redemption Date all then

outstanding shares of the applicable series of Preferred Stock in accordance with Subsection 3(a) (other than the shares of such series of Preferred Stock as are duly converted pursuant to Section 2 hereof prior to the close of business on the fifth (5th) full day preceding the Redemption Date). Except as provided in Subsection 3(b) above, each Requesting Holder shall surrender to the Corporation on the applicable Redemption Date the certificate(s) representing the shares to be redeemed on such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Redemption Price shall be paid to the order of each such Requesting Holder and each certificate surrendered for redemption shall be canceled. In the case less than all Preferred Stock represented by any certificate is redeemed in any redemption pursuant to this Section 3, a new certificate will be issued representing the unredeemed Preferred Stock without cost to the holder thereof.

(e) Until a share of Preferred Stock is actually redeemed, each such share shall be entitled to any dividends declared upon such series of Preferred Stock and, until a share of Preferred Stock is actually redeemed, all rights of the holder of such share as a stockholder of the Corporation by reason of the ownership of such share (including, without limitation, voting rights and conversion rights) will continue in full force and effect.

Section 4. Restrictions.

(a) At any time when at least 1,000,000 shares of Preferred Stock are outstanding, except where the vote of the holders of a greater number of shares of Series A Preferred Stock and/or Series B Preferred Stock is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or by this Certificate of Incorporation, without the affirmative vote or written consent of both: (y) the holders of at least a majority in interest of the then issued and outstanding shares of Series A Preferred Stock; and (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, voting as separate classes, the Corporation will not:

(i) amend, alter or change the designation of any preferences, voting or other powers, qualifications, or special or relative rights or privileges of any series of Preferred Stock that adversely affects such Preferred Stock or the holders thereof;

(ii) increase or decrease (other than pursuant to a redemption or conversion contemplated by this Certificate of Incorporation) the authorized number of shares of any series of Preferred Stock;

(iii) create, authorize or issue any class or series of stock having any preference or priority over or being on a parity with any such preference or priority of any series of Preferred Stock or any security convertible into or exchangeable or exercisable for any such class a series of stock;

(iv) effect any license of the Corporation’s technology, other than in the ordinary course of business, in such a manner as to have the same economic effect as the sale of all or substantially all of the properties or assets of the Corporation;

(v) effect any liquidation, dissolution or winding up of the Corporation;

(vi) effect any sale, lease, assignment, transfer or other conveyance (other than the grant of a mortgage or security interest in connection with indebtedness for borrowed money) of all or substantially all of the properties or assets of the Corporation;

(vii) effect any amendment, alteration or change of this Certificate of Incorporation that adversely affects any of the rights of any series of Preferred Stock set forth in this Certificate of Incorporation or by law;

(viii) effect any redemption or repurchase with respect to any shares of Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements approved by the Corporation's Board of Directors that permit the Corporation to repurchase such shares at no greater amount than their original purchase price upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(ix) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any shares of Preferred Stock otherwise than by redemption in accordance with Section 3 hereof or by conversion in accordance with Section 2 hereof;

(x) reissue any share of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise;

(xi) effect any reclassification or other change of any stock, or any recapitalization of the Corporation;

(xii) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any of its wholly-owned subsidiaries, any stock of such subsidiary;

(xiii) change the authorized number of directors of the Corporation, or the number as to which the Preferred Stock has special voting rights, or the manner in which the Preferred Stock may exercise its special voting rights;

(xiv) effect any consolidation or merger involving the Corporation or any of its subsidiaries (not including a consolidation or merger involving only the Corporation and one or more of its wholly-owned subsidiaries and no other entities, or a consolidation or merger involving only two or more of the Corporation's wholly-owned subsidiaries and no other entities); or

(xv) effect any transaction or series of transactions by which the Corporation issues securities having voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions, or otherwise having the effect of transferring voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions (for purposes of determining voting power for this subsection, all securities convertible into Common Stock shall be assumed to have

been converted, and all options, warrants and other rights to acquire Common Stock or other securities convertible into Common Stock, whether then or at some time in the future, shall be assumed to have been exercised).

(b) Notwithstanding any other provision of this Certificate of Incorporation or the Corporation's Bylaws to the contrary, written notice of any action specified in Subsection 4(a) shall be given to each holder of Preferred Stock entitled to vote or consent with respect to such action at least twenty (20) days before the date on which the books of the Corporation shall close or a record shall be taken with respect to such proposed action, or, if there shall be no such date, at least twenty (20) days before the date when such proposed action is scheduled to take place. Any holder of outstanding shares of Preferred Stock may waive any notice required by this Subsection 4(b) by a written document specifically indicating such waiver.

Section 5. Voting Rights.

(a) Voting by Preferred Stock and Common Stock. Except as otherwise required by law or set forth in this Certificate of Incorporation, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to notice of any meeting of stockholders and shall vote together with the holders of Common Stock as a single class upon any matter submitted to the stockholders for a vote. With respect to all questions as to which, by law or by this Certificate of Incorporation, stockholders are required to vote by classes or series, each of the Series A Preferred Stock and Series B Preferred Stock shall vote as separate classes apart from the Common Stock. Shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock shall entitle the holders thereof to the following number of votes on any matter as to which they are entitled to vote:

(i) holders of Common Stock shall have one vote per share; and

(ii) holders of Series A Preferred Stock and Series B Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Series A Preferred Stock or Series B Preferred Stock (as the case may be) held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the date of any written consent.

(b) Election of Directors.

(i) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series A Preferred Stock (voting as a separate single class) will elect two (2) directors.

(ii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series B Preferred Stock (voting as a separate single class) will elect two (2) directors.

(iii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Common Stock (voting as a separate single

class, and excluding shares of Preferred Stock convertible into shares of Common Stock) will elect three (3) directors.

(iv) At each election of the Corporation's directors, the holders of a majority in interest of the Common Stock, Series A Preferred, and Series B Preferred (voting as a single class on an as-converted basis), will elect one (1) director.

(v) Notwithstanding any Bylaw provisions to the contrary, only the stockholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions under Delaware law.

(c) Number of Board of Directors. Any provision of the Bylaws of the Corporation to the contrary notwithstanding, the number of directors constituting the entire Board of Directors of the Corporation may not be increased above eight (8) without the prior written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class).

(d) Calling of Stockholder Meetings. In addition to any rights which may be available under the Corporation's Bylaws or otherwise under law, the holders of not less than twenty-five percent (25%) in voting power of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class) shall be entitled to call meetings of the stockholders of the Corporation. Within five (5) business days after written application by such holders of Preferred Stock, the President or Secretary, or such other officer of the Corporation as may be authorized in the Bylaws of the Corporation to give notice of meetings of stockholders of the Corporation, shall notify each stockholder of the Corporation entitled to such notice of the date, time, place and purpose of such meeting. No meeting of stockholders called pursuant to this Subsection 5(d) shall take place more than fourteen (14) days after the date notice of such meeting is given.

(e) Vacancies on Board.

(i) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of any series of Preferred Stock voting as a separate single class, the remaining director or directors so elected by the holders of such series of Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of such series of Preferred Stock, then the holders of a majority of the shares of such series of Preferred Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Common Stock voting as a separate single class, the remaining director or directors so elected by the holders of the Common Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or

directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of the Common Stock, then the holders of a majority of the shares of the Common Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(f) Termination of Certain Voting Rights. The method for election of directors set forth in Subsection 5(b) above, the restriction on the size of the Corporation's Board of Directors set forth in Subsection 5(c) above and the ability of the holders of Preferred Stock to call a stockholder meeting set forth in Subsection 5(d) above shall all automatically terminate and be of no further force or effect upon the earliest to occur of (1) a Qualified Public Offering, (2) the merger or consolidation of the Corporation with or into any other corporation or entity that results in all Preferred Stock being converted into Common Stock (unless stockholders of the Corporation immediately prior to such transaction are holders of at least a majority of the voting securities of the surviving or acquiring corporation thereafter, and for the purposes of this calculation, voting securities of the surviving or acquiring corporation which any stockholder of the corporation owned immediately prior to such merger or consolidation as stockholders of another party to the transaction shall be disregarded) or (3) when less than 1,000,000 shares of Preferred Stock (excluding shares of Common Stock issued upon the conversion of any shares of Preferred Stock) are outstanding.

Section 6. Dividends.

(a) The holders of Preferred Stock shall be entitled to receive, when and if declared by the Corporation's Board of Directors, out of any funds legally available therefor, preferential non-cumulative dividends in cash at the rate of (i) five and four-hundredths cents ($0.0504) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series A Preferred Stock, and (ii) eleven and forty-four-hundredths cents ($0.1144) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series B Preferred Stock. Any such dividends shall be distributed ratably among the holders of Series A Preferred Stock and Series B Preferred Stock in proportion to the full amount each such holder is otherwise entitled to receive under this Subsection 6(a).

(b) No dividends or other distributions (whether payable in cash, securities, property or other assets) shall be paid on any Common Stock until (i) all dividends accrued or declared but unpaid on the Preferred Stock shall have been paid in full and (ii) in the event that the Corporation's Board of Directors have not declared a dividend on the Preferred Stock during the then-current calendar year, all dividends are paid in full on the Preferred Stock as if such Board had declared a dividend on the Preferred Stock pursuant to Subsection 6(a) above during the then-current calendar year.

(c) Subject to Subsection 6(b) above, dividends and distributions may be declared and paid on Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation; provided, however, that when and as dividends and distributions are declared and paid on shares of Common Stock, the Corporation shall declare and pay at the same time to each holder of Preferred Stock, in addition to that which may be paid to satisfy the conditions set forth in Subsection 6(b) above, a dividend or distribution equal to the

dividend or distribution which would have been payable to such holder if the shares of Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution.

(d) No dividends or distributions shall be declared or paid on the Common Stock or Preferred Stock except as set forth in this Section 6.

(e) As used herein, "distribution" means the transfer of cash or property without consideration, whether by way of dividend or otherwise (except a dividend in shares of Common Stock) or the purchase of shares of capital stock of the Corporation for cash or property.

(f) The prohibition on payment of dividends and other distributions set forth in Subsection 6(d) above shall not apply to:

(i) Dividends payable solely in the Common Stock of the Corporation approved by the board of directors (including each of the Preferred Directors);

(ii) Acquisitions of Common Stock by the Corporation at a price not greater than the amount paid by service providers for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, so long as such acquisition is approved by the board of directors (including each of the Preferred Directors);

(iii) Acquisitions of Common Stock by the Corporation pursuant to its right of repurchase set forth in the Stock Repurchase Agreement, dated as of May 25, 2001, among the Corporation, Michael D. Hooven and Susan Spies;

(iv) Acquisitions of stock in exercise of the Corporation's right of first refusal upon a proposed transfer approved by the board of directors (including each of the Preferred Directors); or

(v) A distribution pursuant to Section 1 above.

Section 7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 8. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the shares of Common Stock.

Section 9. Notices. All notices and other communications to any party required or permitted to be sent pursuant to this Article IV (collectively, "Notices") shall be contained in a written instrument addressed to such party at such party's address as it appears on the books of the Corporation and shall be deemed given (a) when delivered in person or duly sent by fax showing confirmation of receipt, (b) five (5) days after being duly sent by first class mail, postage prepaid (other than in the case of Notices to or from any non-U.S. resident, which Notices must be sent in the manner specified in clause (a) or (c)), or (c) two (2) days after being duly sent by DHL, Fedex or other recognized express international courier service.

**EXHIBIT B**

**Capitalization Table.**

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| US Venture Partners | 3,968,254 | 4,393,705 | 1,200,700 | 360,210 | | 0 | 9,922,869 | 28.598% |
| Camden Partners | | 3,496,503 | | | | | 3,496,503 | 10.077% |
| Charter Ventures | 1,587,302 | 930,070 | 473,217 | 141,966 | | | 3,132,555 | 9.028% |
| Foundation Medical Partners, L.P. | | 2,097,902 | | | | | 2,097,902 | 6.046% |
| Hooven, Michael D. - Irrevocable Trust | | | | | 1,270,000 | | 1,270,000 | 3.660% |
| Spies, Susan - Irrevocable Trust | | | | | 1,270,000 | | 1,270,000 | 3.660% |
| Drachman, David | | | | | | 1,200,000 | 1,200,000 | 3.458% |
| Weldon Foundation, The | 810,125 | | 105,944 | 31,783 | | | 947,852 | 2.732% |
| Harrison, M.D. Donald C. | 372,916 | | 111,595 | 33,478 | 250,000 | 43,000 | 810,989 | 2.337% |
| New England Partners Capital, L.P. | | 699,301 | | | | | 699,301 | 2.015% |
| Partisan Management Group Inc. | 545,767 | | 105,944 | 31,783 | | | 683,494 | 1.970% |
| Robards, Karen P. | 165,740 | 209,790 | 66,391 | 19,917 | 189,000 | 15,000 | 665,838 | 1.919% |
| Cassidy, Karen J. | 82,870 | | 24,721 | 7,416 | 490,000 | 0 | 605,007 | 1.744% |
| Weldon, Carol J. | 82,429 | | 216,832 | 65,050 | 140,000 | | 504,311 | 1.453% |
| Weldon, Norm | | | | | 465,000 | 0 | 465,000 | 1.340% |
| Hooven, Michael D. | 41,435 | | | | | 350,000 | 391,435 | 1.128% |
| Lifschultz, Lowell S. | 165,740 | | 66,391 | 19,917 | | 15,000 | 267,048 | 0.770% |
| Fischer, Frank M. | 41,214 | | 16,951 | 5,085 | 175,000 | | 238,250 | 0.687% |
| Sherman, Jon | | | | | | 210,000 | 210,000 | 0.605% |
| D'Augustine, Richard J. | 41,435 | | 10,595 | 3,178 | 140,000 | 7,500 | 202,708 | 0.584% |
| Murray, David | | | | | 199,990 | 0 | 199,990 | 0.576% |
| Hudson, Utako K. | 41,214 | | 12,713 | 3,814 | 140,000 | | 197,741 | 0.570% |
| Kullback, William | | | | | | 180,000 | 180,000 | 0.519% |
| Brooke, Paul A. | | | | | 175,000 | | 175,000 | 0.504% |
| Privitera, Salvatore | | | | | | 175,000 | 175,000 | 0.504% |
| Ogle, Raymond W. | 41,435 | | 12,713 | 3,814 | 84,000 | 7,500 | 149,462 | 0.431% |
| Lifschultz, Elizabeth H. | | 147,902 | | | | | 147,902 | 0.426% |
| Chaldekas, James A. | | | | | 140,000 | | 140,000 | 0.403% |
| Colman, Frederic C. | | | | | 140,000 | | 140,000 | 0.403% |
| Davis, James E. | | | | | 140,000 | | 140,000 | 0.403% |
| Davis, Joseph H. | | | | | 140,000 | | 140,000 | 0.403% |
| Greenfield Family, L.P. | 79,365 | | 24,014 | 7,204 | | | 110,583 | 0.319% |
| Wolf, M.D. Randall K. | 39,683 | | 16,245 | 4,873 | 14,000 | 28,000 | 102,801 | 0.296% |
| Abruzzo, Elsa | | | | | | 100,000 | 100,000 | 0.288% |
| Smith, M.D. C. Daniel | | | | | 91,000 | | 91,000 | 0.262% |
| Friedman, PhD Mark | | | | | | 90,000 | 90,000 | 0.259% |
| Cambridge, Steve | | | | | | 85,000 | 85,000 | 0.245% |
| Santamore, Ph.D. William P. | 41,214 | | | | 31,500 | 10,500 | 83,214 | 0.240% |
| Lorry, Brandon | | | | | 20,000 | 60,000 | 80,000 | 0.231% |
| Spies, Erika A. & Eberhard H. - Irrevocable Trust | | | | | 80,000 | | 80,000 | 0.231% |
| Freund, John G. | | | | | 70,000 | | 70,000 | 0.202% |
| Fuchs, Betty C./Lawrence H. | | | | | 70,000 | | 70,000 | 0.202% |
| Goldin, M.D. Sylvan | | | | | 70,000 | | 70,000 | 0.202% |
| Hooven, Brian A. - Irrevocable Trust | | | | | 70,000 | | 70,000 | 0.202% |
| Leetmaa-Livingston, Bonnie | | | | | 70,000 | | 70,000 | 0.202% |
| Mazzola, Christian L. - Revocable Trust | | | | | 70,000 | | 70,000 | 0.202% |
| Paulson, Photios | | | | | 70,000 | | 70,000 | 0.202% |
| Richardson, Ted | | | | | 52,500 | 17,500 | 70,000 | 0.202% |
| Walsh, Richard | | | | | | 70,000 | 70,000 | 0.202% |
| Winkler, Matt | | | | | | 70,000 | 70,000 | 0.202% |
| Woolf, Patricia K. | | | | | 70,000 | | 70,000 | 0.202% |
| Stern, Roger | | 69,930 | | | | | 69,930 | 0.202% |
| Gaughan, Terry | | | | | | 61,898 | 61,898 | 0.178% |
| Staats, Peter | | | | | 5,000 | 55,000 | 60,000 | 0.173% |
| Lucky, James | | | | | | 55,000 | 55,000 | 0.159% |
| Drach, Greg | | | | | | 50,000 | 50,000 | 0.144% |
| Simmons, June | | | | | | 50,000 | 50,000 | 0.144% |
| Spies, Susan | | | | | | 50,000 | 50,000 | 0.144% |
| Mazzola, Christian L. | 41,214 | | | | | | 41,214 | 0.119% |
| Hooven, Carole K. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, Frederick H. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, John E. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, Michael C. | | | | | 40,000 | | 40,000 | 0.115% |
| Duke Univ. Special Venture Fund | 39,683 | | | | | | 39,683 | 0.114% |
| Kline, Robert A. | 39,683 | | | | | | 39,683 | 0.114% |
| Martin, Jr. John B. | | | | | 35,000 | | 35,000 | 0.101% |
| Pinchuk, Leonard | | | | | 35,000 | | 35,000 | 0.101% |
| Spies, Eberhard/Erika | | | | | 35,000 | | 35,000 | 0.101% |
| Zapolanski, M.D. Alex | | | | | | 35,000 | 35,000 | 0.101% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O Street Corporation | | 34,965 | | | | 34,965 | 0.101% |
| D’Augustine, Merida A. | 24,861 | | 7,063 | 2,119 | | 34,043 | 0.098% |
| Ladd, Doug | | | | | 31,250 | 31,250 | 0.090% |

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| Miller, Ken | | | | | | 30,000 | 30,000 | 0.086% |
| Wainscott, Mark | | | | | | 26,874 | 26,874 | 0.077% |
| Kerr, Janice | | | | | | 26,400 | 26,400 | 0.076% |
| Alexander, Patrick | | | | | | 26,000 | 26,000 | 0.075% |
| Beckjorden, Thomas | | | | | | 25,700 | 25,700 | 0.074% |
| Gillinov, A Marc | | | | | | 25,000 | 25,000 | 0.072% |
| McCarthy, MD, Patrick | | | | | | 25,000 | 25,000 | 0.072% |
| Weldon, Cynthia M. as custodian for Michael J. Weldon | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, David J. | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Marijke L. | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, R. David | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Andrew M. Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Christopher R. Weldon | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Eric Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Mathew T. Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Becker (Gabbard), Jane | | | | | 22,500 | | 22,500 | 0.065% |
| Flanagan, Martin | | | | | | 21,500 | 21,500 | 0.062% |
| Allen, Steven | | | | | | 20,000 | 20,000 | 0.058% |
| Bantivoglio, Robert | | | | | | 20,000 | 20,000 | 0.058% |
| Beams, Raymond | | | | | | 20,000 | 20,000 | 0.058% |
| Ellenson, Scott | | | | | | 20,000 | 20,000 | 0.058% |
| Henderson, Kevin | | | | | | 20,000 | 20,000 | 0.058% |
| Hooven, Abigail | | | | | 20,000 | | 20,000 | 0.058% |
| Hooven, Maxwell | | | | | 20,000 | | 20,000 | 0.058% |
| Hooven, Molly | | | | | 20,000 | | 20,000 | 0.058% |
| Kent, James | | | | | | 20,000 | 20,000 | 0.058% |
| Lafer, Mark | | | | | | 20,000 | 20,000 | 0.058% |
| Lange, Anne | | | | | 20,000 | | 20,000 | 0.058% |
| Mathiason, Anthony | | | | | | 20,000 | 20,000 | 0.058% |
| Palmer, J. Reneee | | | | | | 20,000 | 20,000 | 0.058% |
| Poole, J. Eric | | | | | | 20,000 | 20,000 | 0.058% |
| Rybak, Waltraut | | | | | 20,000 | | 20,000 | 0.058% |
| Seith, Douglas | | | | | | 20,000 | 20,000 | 0.058% |
| Shapiro, Amy | | | | | | 20,000 | 20,000 | 0.058% |
| Strong, Stewart | | | | | | 20,000 | 20,000 | 0.058% |
| Ball, Laura | | | | | | 15,000 | 15,000 | 0.043% |
| Frazier, Kenneth | | | | | | 15,000 | 15,000 | 0.043% |
| Haines, Randy | | | | | | 15,000 | 15,000 | 0.043% |
| Jacobs, Jonathan | | | | | | 15,000 | 15,000 | 0.043% |
| Kaganov, Alan L. | | | | | | 15,000 | 15,000 | 0.043% |
| Krauss, Anita | | | | | | 15,000 | 15,000 | 0.043% |
| McCarthy, Sean | | | | | | 15,000 | 15,000 | 0.043% |
| Scent, Dianne | | | | | 15,000 | | 15,000 | 0.043% |
| Shaffer, Maureen | | | | | | 15,000 | 15,000 | 0.043% |
| Vasquez, David | | | | | | 15,000 | 15,000 | 0.043% |
| Wichman (Luken), Sarah | | | | | | 15,000 | 15,000 | 0.043% |
| Schneeberger, M.D. Eric William | | | | | | 14,500 | 14,500 | 0.042% |
| Benussi, M.D. Stefano | | | | | | 14,000 | 14,000 | 0.040% |
| Daniell, M.D. James F. | | | | | 14,000 | | 14,000 | 0.040% |
| Haines, M.D. David | | | | | | 14,000 | 14,000 | 0.040% |
| McKernan, M.D. J. Barry | | | | | 14,000 | | 14,000 | 0.040% |
| Melo, M.D. Joao | | | | | | 14,000 | 14,000 | 0.040% |
| Patton, Gerald | | | | | | 14,000 | 14,000 | 0.040% |
| Bagley, Barry | | | | | | 10,000 | 10,000 | 0.029% |
| Caldiero-Martinucci, Marilyn | | | | | | 10,000 | 10,000 | 0.029% |
| Cunningham, Jim | | | | | | 10,000 | 10,000 | 0.029% |
| Dlugos, Dan | | | | | 10,000 | | 10,000 | 0.029% |
| Holahan, Terrie | | | | | | 10,000 | 10,000 | 0.029% |
| Kogan, Alexander | | | | | | 10,000 | 10,000 | 0.029% |
| Lund, Thomas W. | | | | | 10,000 | | 10,000 | 0.029% |
| Meade, Connie | | | | | | 10,000 | 10,000 | 0.029% |
| Nakagawa, M.D. Hiroshi | | | | | | 10,000 | 10,000 | 0.029% |
| Palmer, Timothy | | | | | | 10,000 | 10,000 | 0.029% |
| Fishberger, MD Steven | | | | | | 7,500 | 7,500 | 0.022% |
| Carlson, M.D. Mark | | | | | | 7,000 | 7,000 | 0.020% |

| | | | | |
|---|---|---|---|---|
| Harp, Adam | | 7,000 | 7,000 | 0.020% |
| Osher, M.D. Sanford S. | 7,000 | | 7,000 | 0.020% |
| Phillips, M.D. Edward H. | 7,000 | | 7,000 | 0.020% |
| Schuessler, M.D. Richard | | 7,000 | 7,000 | 0.020% |
| Gerding, Annette | 6,125 | | 6,125 | 0.018% |
| Hughett, David | | 6,000 | 6,000 | 0.017% |
| Police, Richard | 5,451 | | 5,451 | 0.016% |
| Craft, Laura | | 5,000 | 5,000 | 0.014% |
| Doll, Sean | | 5,000 | 5,000 | 0.014% |
| Evans, Steve | | 5,000 | 5,000 | 0.014% |
| Gauch, Natacha | 5,000 | 0 | 5,000 | 0.014% |
| Hoffman, Joseph | | 5,000 | 5,000 | 0.014% |

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| Kress, M.D. David | | | | | | 5,000 | 5,000 | 0.014% |
| Messerly, Jeffrey | | | | | 5,000 | | 5,000 | 0.014% |
| Millar, Roger MD | | | | | | 5,000 | 5,000 | 0.014% |
| Robinson, Stephen | | | | | | 5,000 | 5,000 | 0.014% |
| Wolff, Chris | | | | | | 5,000 | 5,000 | 0.014% |
| Biehle, Edward | | | | | | 4,000 | 4,000 | 0.012% |
| Hughes, Patrick | | | | | 4,000 | 0 | 4,000 | 0.012% |
| Rister, David | | | | | | 4,000 | 4,000 | 0.012% |
| Sewak, Jon | | | | | | 4,000 | 4,000 | 0.012% |
| Reckelhoff, Jerry | | | | | 3,750 | 0 | 3,750 | 0.011% |
| Fischer, Ann E. | | | | | 3,500 | | 3,500 | 0.010% |
| Park, Christopher | | | | | | 3,500 | 3,500 | 0.010% |
| Wampler, Tamala | | | | | | 3,500 | 3,500 | 0.010% |
| Glithero, Jason | | | | | | 3,000 | 3,000 | 0.009% |
| Martin, Keith | | | | | | 3,000 | 3,000 | 0.009% |
| Dumbauld, Patrick | | | | | 2,500 | 0 | 2,500 | 0.007% |
| Rubio, Craig | | | | | | 2,500 | 2,500 | 0.007% |
| Diniz, Linda | | | | | | 1,500 | 1,500 | 0.004% |
| Sabla, Shannon | | | | | | 1,500 | 1,500 | 0.004% |
| Wright, Vickie | | | | | 1,250 | 0 | 1,250 | 0.004% |
| Greifenkamp, Tom | | | | | 1,000 | 0 | 1,000 | 0.003% |
| Hargis, Richard | | | | | 750 | 250 | 1,000 | 0.003% |
| Mathis, Shannon | | | | | | 1,000 | 1,000 | 0.003% |
| Hendersen, Steven L. | | | | | 875 | | 875 | 0.003% |
| Brewer, Candy | | | | | 700 | 0 | 700 | 0.002% |
| Hasse, John | | | | | 700 | 0 | 700 | 0.002% |
| Hasse, Kathleen | | | | | 700 | 0 | 700 | 0.002% |
| Hegener, Deborah | | | | | 700 | 0 | 700 | 0.002% |
| Koehler, Jane | | | | | 700 | 0 | 700 | 0.002% |
| Mueller, Kenneth | | | | | 700 | 0 | 700 | 0.002% |
| Reynolds, Shelia | | | | | 700 | 0 | 700 | 0.002% |
| Shearer, Kathleen | | | | | 700 | 0 | 700 | 0.002% |
| Stewart, Kevin | | | | | 700 | 0 | 700 | 0.002% |
| Sweeney, Karen | | | | | 700 | 0 | 700 | 0.002% |
| Thomas, Shelia | | | | | 700 | 0 | 700 | 0.002% |
| Jordan, Susan | | | | | | 500 | 500 | 0.001% |
| Adams, Theresa | | | | | | 200 | 200 | 0.001% |
| Kulesza, Cheryl | | | | | | 200 | 200 | 0.001% |
| Sabine, David | | | | | | 200 | 200 | 0.001% |
| Smith, Joshua | | | | | | 100 | 100 | 0.000% |
| **Totals** | 8,293,579 | 12,080,068 | 2,472,029 | 741,607 | 7,144,641 | 3,965,322 | 34,697,246 | 100.00% |
| | | | | | | | | 5,100,000 |
| Total shares of Capital Stock on a Fully-Diluted Basis | | | | | | | 34,824,746 | |
| * Options reserved for conditional option grants | | | | | | 126,500 | | |
| * Options pending board approval | | | | | | 1,000 | | |
| * Options exercised | | | | | | 483,766 | | |
| Options available for future issuance ** | | | | | | 523,412 | | |

**reflects conditional, pending and exercised shares

**EXHIBIT 10.1**

**ATRICURE, INC.**

**2001 STOCK OPTION PLAN**

***Adopted by the Board of Directors on March 29, 2001***
***And Last Amended by the Board of Directors on February 2, 2005***

1**. PURPOSES.**

**(**a**)** The purpose of the Plan is to provide a means by which selected Employees and Directors of and Consultants to the Company, and its Affiliates, may be given an opportunity to purchase stock of the Company.

**(**b**)** The Company, by means of the Plan, seeks to retain the services of persons who are now Employees or Directors of or Consultants to the Company or its Affiliates, to secure and retain the services of new Employees, Directors and Consultants, and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

**(**c**)** The Company intends that the Options issued under the Plan shall, in the discretion of the Board or any Committee to which responsibility for administration of the Plan has been delegated pursuant to subsection 3(c), be either Incentive Stock Options or Nonstatutory Stock Options. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and in such form as issued pursuant to Section 6, and a separate certificate or certificates will be issued for shares purchased on exercise of each type of Option.

2**. DEFINITIONS.**

**(**a**) "Affiliate"** means any parent corporation or subsidiary corporation, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f) respectively, of the Code.

**(**b**) "Board"** means the Board of Directors of the Company.

**(**c**) "Code"** means the Internal Revenue Code of 1986, as amended.

**(**d**) "Committee"** means a Stock Option Committee of the Board.

**(**e**) "Company"** means AtriCure, Inc., a Delaware corporation.

**(**f**) "Consultant"** means any person, including an advisor, engaged by the Company or an Affiliate to render consulting services and who is compensated for such services, provided that the term "Consultant" shall not include Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors. For purposes of this definition, "Consultant" shall include any employee of Enable.

**(**g**) "Continuous Status as an Employee, Director or Consultant"** means that the service of an individual to the Company, whether as an Employee, Director or Consultant, is not

interrupted or terminated. For purposes of this definition, an employee of Enable shall remain in Continuous Status as a Consultant until the effective date of such employee's termination of employment with Enable (unless as of such termination date, such employee is otherwise engaged as a Consultant to the Company in which case, such Consultant's Continuous Status shall end upon the termination of his or her engagement with the Company). The Board, in its sole discretion, may determine whether Continuous Status as an Employee, Director or Consultant shall be considered interrupted in the case of: (i) any leave of absence approved by the Board, including sick leave, military leave, or any other personal leave; or (ii) transfers between the Company, Affiliates or their successors.

**(**h**) "Director"** means a member of the Board.

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

**(**j**) "Enable"** means Enable Medical Corporation.

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

**(**l**) "Fair Market Value"** of a share of Common Stock as of a specified date shall mean: (i) if the Common Stock is publicly traded and listed on the New York Stock Exchange or another national securities exchange or The Nasdaq Stock Market, the closing sale price of the Common Stock on the trading day immediately preceding the date as of which the Fair Market Value is being determined or, if the Common Stock is not so listed on a national securities exchange or The Nasdaq Stock Market, but publicly traded, the representative closing sale price in the over-the-counter market, as quoted by the National Quotation Bureau or a recognized dealer in the Common Stock, on the trading day immediately preceding the date as of which the Fair Market Value is being determined; or (ii) if the Common Stock is not publicly traded, the value per share determined by the Board in its sole discretion.

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

**(**n**) "Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option.

**(**o**) "Officer"** means an officer of the Company.

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

**(**q**) "Option Agreement"** means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

**(**r**) "Optionee"** means an Employee, Director or Consultant who holds an outstanding Option.

**(**s**) "Plan"** means this 2001 Stock Option Plan.

3**. ADMINISTRATION.**

**(**a**)** Prior to an initial public offering of the Company's Common Stock ("Company IPO"), the Plan shall be administered by the Board, and in its discretion as delegated from time to time, a Committee of the Board as provided in subsection 3(c) (and references herein to the Committee shall be deemed, where appropriate, to be references to the Board during such period). After a Company IPO, the Committee shall have all rights and powers exclusively to administer the Plan (and references herein to the Board shall be deemed, where appropriate, to be references to the Committee during such period).

**(**b**)** The Board and/or the Committee shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(**1**)** To determine from time to time which of the persons eligible under the Plan shall be granted Options; when and how each Option shall be granted; whether an Option will be an Incentive Stock Option or a Nonstatutory Stock Option; the provisions of each Option granted (which need not be identical), including the time or times such Option may be exercised in whole or in part; and the number of shares for which an Option shall be granted to each such person.

**(**2**)** To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Committee, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

**(**3**)** To amend the Plan or an Option as provided in Section 11.

**(**4**)** Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

**(**c**)** Subject to subsection 3(a), the Board may delegate administration of the Plan to the Committee, which Committee shall at all times consist of two (2) or more Board members. The Board shall have the power at any time to fill vacancies in or to change the membership of such Committee, and prior to a Company IPO, to discharge such Committee. The Committee shall select one of its members as its chairman and shall hold its meetings at such time and at such places as it shall deem advisable. A majority of such Committee shall constitute a quorum and such majority shall determine its action. Any action may be taken without a meeting by written consent of all the members of the Committee. The Committee shall keep minutes of its proceedings and shall report the same to the Board at the next succeeding meeting. To the extent practicable, at all times after a Company IPO, the members of the Committee shall be "outside directors" as defined in the regulations under Section 162(m) of the Code and "non-employee directors" as defined by Regulation 240.16b-3 under the Exchange Act.

4**. SHARES SUBJECT TO THE PLAN.**

**(**a**)** Subject to the provisions of Section 10 relating to adjustments upon changes in stock, the stock that may be sold pursuant to Options shall not exceed an aggregate of Five Million One Hundred Thousand (5,100,000) shares of the Company's common stock, par value $0.0001 per share ("Common Stock"). If any Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the stock not purchased under such Option shall revert to and again become available for issuance under the Plan.

**(**b**)** The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5**. ELIGIBILITY.**

**(**a**)** Incentive Stock Options may be granted only to Employees. Nonstatutory Stock Options may be granted only to Employees, Directors or Consultants.

**(**b**)** No person shall be eligible for the grant of an Incentive Stock Option if, at the time of grant, such person owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates ("10% Owner") unless the exercise price of such Incentive Stock Option is at least one hundred ten percent (110%) of the Fair Market Value of such stock at the date of grant and the Incentive Stock Option is not exercisable after the expiration of five (5) years from the date of grant. To the extent required by applicable law, the provisions of this subsection 5(b) shall also apply to the grant of a Nonstatutory Stock Option granted to a ten percent (10%) stockholder described in the preceding sentence.

6**. OPTION PROVISIONS.**

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

**(**a**) Term.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted (or five (5) years in the case of an Incentive Option granted to a 10% owner).

**(**b**) Price.** The exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value on the date of grant (or in the case of a 10% Owner, the exercise price of an Incentive Stock Option must be at least one hundred ten percent (110%) of the Fair Market Value of such stock at the date of grant). Notwithstanding the foregoing, the Board may grant an Option with an exercise price lower than that set forth above if such Option is granted as part of a transaction pursuant to section 424(a) of the Code.

**(**c**) Consideration.** The purchase price of stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, (i) by cash or check, (ii) if permitted by the Company, by delivery and assignment of shares of Common Stock having a Fair Market Value equal to the exercise price, (iii) if permitted by the Company, by a promissory note, or (iv) by a combination of (i), (ii) and (iii); provided, however, in the event of payment of the exercise price for the shares of Common Stock by method (ii) or (iv) above, the shares of Common Stock so surrendered, if originally issued to the Optionee upon exercise of a stock option(s) granted by the Company, shall have been held by the Optionee for more than six (6) months.

**(**d**) Transferability**. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Incentive Stock Option is granted only by such person. A Nonstatutory Stock Option shall only be transferable by the Optionee upon such terms and conditions as set forth in the Option Agreement for such Nonstatutory Option, as the Board or Committee shall determine in its discretion, except that each Nonstatutory Stock Option may be transferred to the spouse, children and lineal descendants of the Optionee (or to a trust created solely for the benefit of the Optionee and the foregoing persons) or to an organization exempt from taxation pursuant to Section 501(c)(3) of the Code or to which tax deductible charitable contributions may be made under Section 170 of the Code (excluding such organizations classified as private foundations under applicable regulations and rulings). The person to whom the Nonstatutory Option is granted may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionee, shall thereafter be entitled to exercise the Option.

**(**e**) Vesting**. The total number of shares of stock subject to an Option may, but need not, be allotted in periodic installments (which may, but need not, be equal). The Option Agreement may provide that from time to time during each of such installment periods, the Option may become exercisable ("vest") with respect to some or all of the shares allotted to that period, and may be exercised with respect to some or all of the shares allotted to such period and/or any prior period as to which the Option became vested but was not fully exercised. To the extent required by applicable law, Options shall vest at the rate of at least twenty percent (20%) per year over five (5) years from the date the option is granted. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The provisions of this subsection 6(e) are subject to any Option provisions governing the minimum number of shares as to which an Option may be exercised.

**(**f**) Securities Law Compliance.** The Company may require any Optionee, or any person to whom an Option is transferred under subsection 6(d), as a condition of exercising any such Option: (1) to give written assurances satisfactory to the Company as to the Optionee's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters, and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (2) to give written assurances satisfactory to the Company stating that such person is acquiring the stock subject to the

Option for such person's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise of the Option has been registered under a then currently effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may require the Optionee to provide such other representations, written assurances or information which the Company shall determine is necessary, desirable or appropriate to comply with applicable securities and other laws as a condition of granting an Option to such Optionee or permitting the Optionee to exercise such Option. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

**(g) Termination of Continuous Status as an Employee, Director or Consultant.** In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates (other than upon the Optionee's death or disability), the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months after the termination of the Optionee's Continuous Status as an Employee, Director or Consultant, or such longer or shorter period specified in the Option Agreement (which shall be at least thirty (30) days, if required by applicable law) or (ii) the expiration of the term of the Option as set forth in the Option Agreement. Finally, an Optionee's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionee's Continuous Status as an Employee, Director or Consultant (other than upon the Optionee's death or disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the later of (i) the expiration of the term of the Option set forth in the first sentence of this Section 6(g), or (ii) the expiration of a period of three (3) months after the termination of the Optionee's Continuous Status as an Employee, Director or Consultant (other than upon the Optionee's death or disability) during which the exercise of the Option would not be in violation of such registration requirements.

**(h) Disability of Optionee.** In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates as a result of the Optionee's disability, the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

**(i) Death of Optionee.** In the event of the death of an Optionee during, or within a period specified in the Option Agreement after the termination of, the Optionee's Continuous

Status as an Employee, Director or Consultant, the Option may be exercised (to the extent the Optionee was entitled to exercise the Option as of the date of death) by the Optionee's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionee's death pursuant to subsection 6(d), but only within the period ending on the earlier of (i) the date twelve (12) months following the date of death (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

**(j) Early Exercise.** The Option may, but need not, include a provision whereby the Optionee may elect at any time while an Employee, Director or Consultant to exercise the Option as to any part or all of the shares subject to the Option prior to the full vesting of the Option. Any unvested shares so purchased shall be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate.

**(k) Right of Repurchase.** The Option may, but need not, include a provision whereby the Company may elect, prior to the date of the first registration of an equity security of the Company under Section 12 of the Exchange Act, to repurchase all or any part of the Optionee's shares acquired pursuant to exercising the Option.

**(l) Right of First Refusal.**

**(1) Sale Notice.** Except as provided in Section 6(d) hereof, and only prior to a Company IPO, if at any time any Optionee ("Offering Stockholder") desires to sell or otherwise transfer any shares of Common Stock acquired pursuant to the exercise of any Options granted hereunder ("Offered Securities"), to any person or entity pursuant to a bona fide offer to purchase from such person or entity ("Offering Purchaser"), such Offering Stockholder shall notify the Company (the "Notice") of his, her or its intention to do so by giving the Company written notice disclosing: (i) the name of the proposed transferee of the shares; (ii) the certificate number and number of shares proposed to be transferred; (iii) the proposed price; (iv) all other terms of the proposed transaction; and (v) a written copy of the proposed offer. The Notice shall offer to sell to the Company the Offered Securities free and clear of any and all liens and encumbrances, at a price and on such other terms and conditions, if any, not less favorable to the Company than those described in the Notice. In the event all or any part of the consideration shall be other than cash, the price shall mean the Fair Market Value of such consideration (determined in good faith by the Board of Directors (which will be deemed final and binding on the parties absent manifest error or fraud)).

**(2) Purchase by the Company.** During the 45-day period after receipt of such Notice, the Company shall have the first right to purchase all or any portion of the Offered Securities at the same price and on the same terms (to the extent practicable) as contained in such Notice (and the Offering Stockholder shall cooperate in all respects with such purchase) by sending written notice of the number of Offered Securities it has determined to purchase to the Offering Stockholder.

**(3) Assignability of the Right of First Refusal.** The Company may assign its right of first refusal as set forth in this Section 6(1).

**(**m**) Withholding**. To the extent provided by the terms of an Option Agreement, the Optionee may satisfy any federal, state or local tax withholding obligation relating to the exercise of such Option by any of the following means or by a combination of such means: (1) tendering a cash payment; (2) authorizing the Company to withhold shares from the shares of the common stock otherwise issuable to the Optionee as a result of the exercise of the Option; or (3) delivering to the Company owned and unencumbered shares of the common stock of the Company.

7**. COVENANTS OF THE COMPANY.**

**(**a**)** During the terms of the Options, the Company shall keep available at all times the number of shares of stock required to satisfy such Options.

**(**b**)** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of stock upon exercise of the Options; *provided*, *however,* that this undertaking shall not require the Company to register, under the Securities Act, any of the Plan, any Option or any stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

**(**c**)** Prior to the Company becoming a reporting company under the Exchange Act, the Company shall provide each Optionee with a copy of the audited balance sheet of the Company for each fiscal year ended as of December 31, and the related audited statements of income, retained earnings, stockholders' equity and changes in financial position of the Company for such year, on the later of (i) thirty (30) days after the completion of the audit for the relevant fiscal year and (ii) thirty (30) days after an Optionee's request in writing to the Company requesting such information.

8**. USE OF PROCEEDS FROM STOCK.**

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

9**. MISCELLANEOUS.**

**(**a**)** The Board shall have the power to accelerate the time at which an Option may first be exercised or the time during which an Option or any part thereof will vest, notwithstanding the provisions in the Option stating the time at which it may first be exercised or the time during which it will vest.

**(**b**)** Neither an Optionee nor any person to whom an Option is transferred under subsection 6(d) shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such person has satisfied all requirements for exercise of the Option pursuant to its terms.

**(**c**)** Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Employee, Director, Consultant or Optionee any right to continue in the employ of the Company or any Affiliate (or to continue acting as a Director or Consultant) or shall affect the right of the Company or any Affiliate to terminate the employment of any Employee with or without cause, the right of the Company's Board of Directors and/or the Company's shareholders to remove any Director pursuant to the terms of the Company's stockholders' agreement, the Company's By-Laws and applicable law, or the right to terminate the relationship of any Consultant pursuant to the terms of such Consultant's agreement with the Company or any Affiliate.

**(**d**)** To the extent that the aggregate Fair Market Value (determined at the time of grant) of stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year under all plans of the Company and its Affiliates exceeds One Hundred Thousand Dollars ($100,000), the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

10**. ADJUSTMENTS UPON CHANGES IN STOCK.**

**(**a**)** If any change is made in the stock subject to the Plan, or subject to any Option (through merger, consolidation, reorganization, reincorporation, recapitalization, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the class(es) and maximum number of shares subject to the Plan pursuant to subsection 4(a), and the outstanding Options will be appropriately adjusted in the class(es) and number of shares and price per share of stock subject to such outstanding Options. Such adjustments shall be made by the Board or Committee, the determination of which shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a "transaction not involving the receipt of consideration by the Company.")

**(**b**)** In the event (any such event, a "Change of Control Event") of: (1) a sale of all or substantially all of the assets of the Company; (2) a merger or consolidation in which the Company is not the surviving corporation; (3) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise; or (4) the acquisition by any person, entity or group within the meaning of Section 13(d) or 14(d) of the Exchange Act, or any comparable successor provisions (excluding any employee benefit plan, or related trust, sponsored or maintained by the Company or any Affiliate of the Company) of the beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act or comparable successor rule) of outstanding securities of the Company representing at least eighty percent (80%) of the combined voting power entitled to vote in the election of directors, then such Options shall become fully vested immediately prior to the closing of such transaction.

11. **AMENDMENT OF THE PLAN AND OPTIONS.**

**(**a**)** The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 10 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the shareholders of the Company within twelve (12) months after the Board's adoption of the amendment where the amendment requires shareholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code (including an increase in the number of shares reserved for issuance under the Plan).

**(**b**)** The Board may, in its sole discretion, submit any other amendment to the Plan for shareholder approval.

**(**c**)** It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide Optionees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

**(**d**)** Rights and obligations under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the person to whom the Option was granted and (ii) such person consents in writing.

**(**e**)** The Board at any time, and from time to time, may amend the terms of any one or more Options; *provided, however,* that the rights and obligations under any Option shall not be impaired by any such amendment unless (i) the Company requests the consent of the person to whom the Option was granted and (ii) such person consents in writing.

12. **TERMINATION OR SUSPENSION OF THE PLAN.**

**(**a**)** The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate ten (10) years from the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

**(**b**)** Rights and obligations under any Option granted while the Plan is in effect shall not be impaired by suspension or termination of the Plan, except with the written consent of the person to whom the Option was granted.

13. **EFFECTIVE DATE OF PLAN.**

The Plan shall become effective as determined by the Board, but no Options granted under the Plan shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months after the date the Plan is adopted by the Board.

14. **APPLICABLE LAW.**

The validity, interpretation and enforcement of this Plan shall be governed in all respects by the laws of the State of Delaware (without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware) and the United States of America.

* * * * * * *

**EXHIBIT 10.6**

# SCHUMACHER COMMERCE PARK

# LEASE AGREEMENT

**BETWEEN**

**ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY**

**AND**

**ATRICURE, INC.**

**DATED December 18, 2000**

SCHUMACHER COMMERCE PARK LEASE AGREEMENT

1. LANDLORD: ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, an Ohio limited liability company.

2. TENANT: ATRICURE, INC., a Delaware corporation.

3. LEASE DATE: 18th day of December, 2000.

4. LOCATION AND LEASED PREMISES: Building Five of Schumacher Commerce Park in its entirety is referred to as the "Entire Premises". The portion of Building Five the Tenant is leasing is referred to as the "Leased Premises". The Leased Premises is a portion of the Entire Premises and is located at 6033 Schumacher Park Drive, West Chester Township, Butler County, Ohio. The Leased Premises consists of 7,311 square feet (3,500 sq. ft. offices and 3,811 sq. ft. of warehouse) as identified on the space plan labeled Exhibit "A", attached to and made a part of this Lease.

5. PARKING: Passenger vehicles are to be parked in those areas designated for parking. The Landlord expressly reserves the right to assign a limited number of parking areas to the Tenant based on Tenant's pro rata share of the total available parking for the Entire Premises.

6. TERM OF THE LEASE: The term of this Lease will be for five (5) years. The Lease will commence on approximately March 1, 2001 and terminate on February 28, 2006. If this Lease is executed before the Leased Premises becomes vacant, or otherwise available and ready for occupancy, or if any present tenant or occupant of the premises holds over, and Landlord cannot acquire possession of the premises prior to the above commencement date of this Lease or if Landlord is unable to substantially complete tenant improvements as scheduled, Landlord shall not be deemed to be in default hereunder, and Tenant agrees to accept possession of the premises at such time as Landlord is able to tender the same; and Landlord hereby waives any payment of rent covering any period prior to the tendering of possession hereunder, and the lease commencement and termination date will be adjusted accordingly. If this Lease commences on other than the first day of the month, the lease term will be extended to the next complete month. Notwithstanding the above, this Lease shall terminate at no cost to Tenant upon the execution of a mutually agreeable Lease at market rates by Tenant and Landlord for a new larger Leased Premises.

7. BASE RENT AND LATE PAYMENT CHARGES: Tenant shall pay Landlord the following base rentals:

| Lease Year | Monthly Base Rent | Annual Base Rent |
|---|---|---|
| Lease Years One - Five | $ 3,738.42 | $ 44,861.04 |

Rent is payable in advance, on the first day of the month, at the office of Landlord. If rent is not received by the tenth of the month, Landlord will charge a late payment fee equal to 10% of the amount due. If the lease commencement date is other than the first day of the month, that month's rent shall be appropriately adjusted.

8. OPERATING COST PARTICIPATION: Tenant is also responsible for paying for their pro-rata share of Building operating expenses, real estate taxes and Building insurance. This includes expenses such as routine maintenance, common utilities for water and exterior lighting, landscaping, parking and truck dock lot repair, and such other expenses as are normally associated with running and maintaining a first class office, showroom, warehouse/manufacturing facility. Operating costs are a direct pass-through of expenses which may increase or decrease from time to time in direct response to the cost of operating the Building. The operating costs will not necessarily change at the same rate as the base rent.

The total square footage of the Entire Premises is 53,577 square feet. Under this lease agreement the Tenant will occupy 13.7% (7,311 square feet/53,577) square feet of the Building, and be responsible for paying their share of operating costs. The Landlord is responsible for paying for the operating costs of any vacant space. Landlord estimates that operating costs through 2000 will be $ 0.85 per square foot of leased space, or a total additional rent of $517.86 per month. This estimated common area cost is billed monthly, but is adjusted on an annual calendar year basis to reflect the actual cost experienced. Bills will be adjusted accordingly if the actual operating cost varies from the estimated cost. Tenants will receive a detailed breakdown of expenses and adjustments by May 15th of the following year.

9. CONDITION OF LEASED PREMISES AND IMPROVEMENTS THERETO

The Leased Premises will be turned over to Tenant in “as is” condition, with the improvements shown on the Floor Plan attached hereto as Exhibit “A” and made a part of this agreement. Tenant accepts the Leased Premises subject to all zoning and other applicable local, state and federal laws and regulations governing the use of the Premises and all covenants and restrictions of record. If in the future Tenant wishes to make alterations to the Leased Premises, Tenant shall request and obtain Landlord’s permission prior to making any improvements. It is Tenant’s responsibility that any improvements made by Tenant be done in accordance with applicable building code and safety requirements. Tenant shall not cause any damage to the Leased Premises or the Entire Premises or cause or allow any mechanic’s lien to be placed on the Premises.

When Tenant terminates this lease, Tenant may remove trade fixtures installed by Tenant, provided that any damage Tenant does in removing the fixtures is properly repaired. However, any lighting fixtures, ceiling, plumbing, heating, ventilation and air-conditioning equipment, as well as all other building fixtures, are considered to be Landlord’s property, and must remain on the premises. Further, any improvements that Tenant has made to the space over and above those covered under the lease agreement must, upon Landlord’s request, be removed by Tenant and the Leased Premises shall be repaired by Tenant to good order.

10. UTILITIES: In addition to the monthly rentals, Tenant is responsible for and shall maintain individually metered utilities for the Leased Premises. This includes gas and electric used in connection with heating, air conditioning, and lighting. The Landlord shall provide and pay for ordinary and domestic water service. However, any commercial or extraordinary water usage by Tenant shall be assessed and paid by Tenant. Tenant is responsible for arranging and paying for rubbish and trash removal for the Leased Premises. Any containers and dumpsters must be kept in the dock area adjacent to the Tenant’s space, and this area must be kept clean and free of any trash or debris or stored materials.

11. SECURITY DEPOSIT: On or before the signing of the Lease Tenant shall deliver to Landlord an initial security deposit in the amount of Three Thousand Seven Hundred Thirty Eight 42/100 Dollars ($3,738.42) as security for Tenant’s faithful performance of Tenant’s obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of the deposit for the payment of rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant’s default, or to compensate Landlord for any loss or damage suffered thereby.

If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore the deposit to the full amount above and Tenant's failure to do so shall be a material breach of this Lease.

Within thirty (30) days after the expiration of the term of this Lease and Tenant's return of the Leased Premises in good order, or any renewals thereof, Landlord shall pay over the remaining balance of the deposit to Tenant, minus any amounts due to Landlord as a result of Tenant's failure to perform or observe any conditions or covenants of this Lease. Landlord shall not be obligated to pay any interest on the security deposit, nor shall Landlord be required to segregate such security deposit from its other funds.

12. PERMITTED USE: Tenant will use and occupy the Leased Premises for offices and warehouse for AtriCure, Inc. or any other use which is reasonably comparable and for no other purpose.

13. ENVIRONMENTAL: Tenant shall indemnify and save Landlord harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs (including compliance and clean-up costs), charges, expenses and disbursements (including fees and expenses of attorneys, expert witnesses, engineers, and other consultants), which may be imposed upon, incurred by or asserted against Landlord by reason of any environmental contamination of the premises caused by Tenant or its agents or employees. Tenant shall not engage in any activity in or about the premises that violates any federal, state or local laws, rules or regulations pertaining to hazardous or toxic materials or the environment, and shall promptly, at Tenant's expense, take all investigatory and/or remedial action required or ordered for clean up of any contamination of the premises or the elements surrounding same created or permitted by Tenant.

14.REPAIRS: Landlord will turn the Leased Premises over to Tenant in good working order. Thereafter, Landlord will be responsible for the maintenance of the roof, exterior walls and gutters, and for structural repairs, unless such repairs are caused or necessitated by Tenant, its employees, customers or contractors. Additionally, Landlord shall maintain at its expense all landscaping, driveways, parking areas and sidewalks.

The Tenant is responsible for maintaining the Leased Premises, and for keeping the Leased Premises in good repair, unless such repairs are necessitated by the negligence of Landlord or his agents. The Tenant is responsible for maintaining the following items unless such repairs are caused or necessitated by the negligence of the Landlord, other tenants or the Landlord's contractors.

(a) all interior walls, floors and ceilings.

(b) all interior glass and windows, doors, and doorframes, including all dock and garage doors, truck bumpers, and related dock devices.

(c) all electrical, lighting (including exit and emergency lighting), plumbing, sprinkler heads and lines, specifically designated for, and installed for the Leased Premises, excluding, however, all electrical and plumbing lines, pipes, wires, ducts and conduits which serve any other part of the Entire Premises other than the Leased Premises; and further provided that all such systems will be turned over to Tenant in good working order.

If Tenant fails to perform its obligations under this Paragraph 13 or any other provision of this Lease, Landlord may at its option enter the Leased Premises after five (5) days' prior written notice to Tenant (except in the case of emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf and put the Leased Premises in good order, condition and repair, and the cost thereof shall be due as additional rent to Landlord together with Tenant's next rental installment.

15. SIGNAGE: Landlord shall provide standard identification signage for Tenant at the entrance to the Leased Premises and in the directory signage for the Entire Premises. Tenant shall not place any additional sign upon either the Leased Premises or the Entire Premises.

16. INSURANCE: Tenant agrees to obtain and keep in force during the term of this Lease beginning at the time that Tenant enters upon the Leased Premises for purposes of making improvements thereto, at Tenant's sole expense, public liability insurance, to protect against any liability to the public incident to the use of or occurring on the Leased Premises or the Entire Premises or any other premises provided for parking or other use. Such insurance shall, generally, be in form and with companies reasonably satisfactory to Landlord and shall include such endorsements and/or separate coverages as are customary in connection with Tenant's proposed use(s) of the Leased and Entire Premises. The liability limits under such insurance shall be not less than $2,000,000.00 for bodily or personal injury, or $500,000.00 for property damage; or a single limit of $2,000,000.00 for bodily and personal injury and property damage combined.

Tenant shall deliver to Landlord the policies of such insurance, or certificates thereof, at least fifteen (15) days prior to the commencement of the term of this Lease, and each renewal policy or certificate thereof, at least fifteen (15) days prior to the expiration of the policy it renews. All such policies shall name Landlord, Tenant, and any mortgage holders designated by Landlord, as co-insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord ten (10) days' prior written notice thereof.

It shall be the responsibility of the Tenant to obtain adequate insurance coverage for all furniture, fixtures, furnishings, equipment, materials, supplies, or other personal property located on the Leased Premises.

It is the Landlord's responsibility to keep in place fire and extended hazard coverage on the Entire Premises. Property damage insurance shall be maintained by Landlord, based on a building replacement cost of no less than $1,200,000.00 for the Entire Premises, and have limits of liability as are customary with respect to similar properties, and, in any event, will be of sufficient amount and value so as to avoid coinsurance. Should Tenant's use of the premises result in a higher risk rating for the Entire Premises, any increase in insurance cost due to Tenant's use will be the responsibility of the Tenant.

17. INDEMNITY: Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the premises, or from the conduct of Tenant's business or from any activity, work or things done or permitted by Tenant in or about the premises. Tenant shall further indemnify and hold harmless Landlord from and against all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from the negligence of Tenant or its agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

18. ACCESS TO LEASED PREMISES: The Landlord shall have the right to enter the Leased Premises during normal business hours for purposes of inspection, repair, remodeling, or to show the Leased Premises to prospective tenants, purchasers or mortgagees. Except in the case of emergency, the Tenant may request that the Landlord provide 24 hour advance notice of the need to enter the Premises.

19. RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY

The decision as to whether or not to repair or reconstruct the Leased Premises in the event of damage by fire or other casualty, and the means, responsibilities, and procedures for undertaking any such repair, and/or reconstruction will be made by the Landlord within 60 days of the date of such damage. If the Leased Premises or Entire Premises is totally destroyed, and Landlord elects not to reconstruct, the Lease shall be terminated as of the date of destruction, and there shall be no further liability on any party thereafter.

20. DEFAULT: Tenant will be considered to be in default of the Lease if Tenant's rent and other charges have not been paid on time. The Tenant will also be in default if Tenant does not maintain insurance as required, or if it becomes bankrupt or insolvent. Tenant will also be considered to be in default of the Lease if the premises become vacant or deserted for more than thirty (30) days, or if Tenant fails to observe or perform any of the provisions of the Lease, including the duty to keep the Leased Premises in good order and repair. In all cases of default, the Tenant will be given ten (10) days written notice that it is in default of the Lease, during which time Tenant may cure the default and pay any additional charges, if applicable.

If Landlord chooses to waive any violation or breach of any term of this Lease, this will not constitute a waiver of subsequent breach of any terms of the Lease. If Landlord chooses not to enforce any of the provisions of this Lease in an event of default, this will not be construed to constitute a waiver of such default.

21. LANDLORD'S REMEDIES: Should an event of default occur under this Lease, Landlord shall have the following rights and remedies:

(a) Landlord may terminate this Lease by written notice to Tenant. On such notice, this Lease and the term shall cease and terminate and Tenant shall vacate and surrender the Premises, but shall remain liable, to the extent hereinafter provided, for all obligations arising under this Lease during the balance of the then-current Term as if this Lease had remained in full force and effect.

(b) Landlord may, on written notice to Tenant, re-enter and recover possession of the Premises. In such event, such property as may be on the Premises may be removed from the Premises and stored by Landlord in a public warehouse or elsewhere at the expense and risk of Tenant, without notice or resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss occasioned thereby.

(c) Should Landlord re-enter and dispossess Tenant of the Premises following an event of default, Landlord may elect to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including, without limitation, all accrued and unpaid rent at the time of such election, plus the then-present value of the amount of rent reserved in this Lease for the remainder of the lease term, all of which amounts shall become immediately due and payable from Tenant to Landlord upon demand.

(d) All rights and remedies of Landlord provided herein are in addition to and not in substitution for such rights and remedies as may be available at law or in equity, and all of such rights and remedies may be exercised independently, cumulatively, and, to the extent such rights and remedies are not inconsistent with each other, simultaneously.

22. SUBORDINATION AND ESTOPPEL: This Lease is, and all of Tenant's rights hereunder are, subject and subordinate to any and all mortgages that now exist or may hereafter be placed upon the Entire Premises or any part thereof, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, modification, consolidations and extensions thereof. This subordination shall be self-operative and shall not require any further writing or confirmation hereof.

Tenant shall promptly at Landlord's request, execute either an estoppel certificate addressed to any mortgagee of Landlord or potential or actual purchaser of the Entire Premises or any portion thereof or a three party agreement among Landlord, Tenant and such mortgagee(s) or purchaser(s) certifying as to such facts (if true) and agreeing to such notice provisions and other matters as such mortgagee(s) may reasonably require in connection with Landlord's financing or such purchaser(s) may reasonably require in connection with the sale of the Entire Premises or any part thereof.

23. HOLDING OVER: Should the Tenant, without Landlord's permission, continue to occupy the premises after the termination or expiration of this Lease, the amount of rent payable will be 50% greater than the rental payment due for the last month of the preceding term of the Lease. The minimum holdover period is one month, although the inclusion of this paragraph shall not be interpreted as Landlord's permission for Tenant to hold over.

24. ASSIGNMENT AND SUBLETTING: Tenant agrees that it will not assign this Lease in whole or in part, or sublet the whole or any part of the Leased Premises, without obtaining the prior written consent of the Landlord. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligations and primary liability under this Lease. In the event of default by any assignee of Tenant, Landlord may proceed directly against Tenant without the necessity of pursuing remedies against the assignee. Landlord's consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

25. QUIET ENJOYMENT: Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, upon paying the rental herein set forth and performing the other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation, subject to the terms and provisions of this Lease.

26. RULES AND REGULATIONS: The Tenant agrees to observe the following rules and regulations of the Landlord and, in addition, to follow such rules and regulations of the Landlord as may be promulgated from time to time by the Landlord for the general good of Schumacher Commerce Park.

1. Tenant will maintain a room temperature of 40 F in the total area of the Leased Premises to eliminate the threat of plumbing and/or sprinkler system freezing.
2. Tenant's use of the Leased Premises shall be restricted to a maximum warehouse floor load consistent with standard warehouse construction of a 5" to 6" slab over fill, compacted to no less than 4,000 pounds per square foot.
3. Tenant shall maintain a minimum of 18 inches (457 mm) clearance between top of storage and ceiling sprinkler detectors. For in-rack sprinklers, the clear space shall be in accordance with NFPA 231C, Standard for Rack Storage of Materials.
4. Tenant is responsible for complying with all applicable fire, safety and building codes including, but not limited to, furnishing, installing and maintaining fire extinguishers as may be required by Tenant's insurance and fire safety officials.

5. Tenant shall not do or permit to be done within the Leased Premises anything which would unreasonably annoy or interfere (whether by noise, odor, sound, etc.,.) with the rights of other tenants in the building. Tenant, its agents and employees shall not use the premises for housing, lodging or sleeping purposes, or for the cooking or preparation of food.

   No immoral or unlawful purpose will be allowed in or on any portion of the Leased Premises. Tenant, its agents and employees shall not bring into or keep on the premises any dog, bird or other animal.

6. Building hours: 8:00 a.m. - 6:00 p.m., Monday through Friday.

7. No soliciting is permitted in the Entire Premises.

8. No auctions or sidewalk sales shall be permitted in or about the Leased Premises.

9. Tenant shall keep sidewalks and steps in front of, to the rear of, and adjacent to the Leased Premises clean and unobstructed in any way.

10. Tenant shall not permit the operation of any musical or sound producing instrument of any type, or any machinery, instrument or device which may be heard outside the Leased Premises.

11. No draperies, shutters, blinds, screens or other window coverings shall be installed on exterior windows except Landlord’s standard blinds.

12. Outside dock storage area - the area immediately adjacent to the Leased Premises is intended solely to be used for spotting of trailers, dumpsters, and other vehicles. It is not to be used for storage of pallets, barrels, materials used in Tenant’s business, or debris. These items must be kept in the Leased Premises, unless they are being set out for immediate removal.

13. Tenant shall not rekey locks, change locks, or add locks without Landlord's written permission first obtained. Any locks added by the Tenant with written permission must be keyed to Landlord's master key. Any expense for rekeying or mastering shall be at the expense of the Tenant.

27. BROKERS: Tenant and Landlord represent that neither of them, nor their officers or any one acting on their behalf has dealt with any real estate broker in connection with the negotiation or making of this Lease.

28. TRANSFER OF OWNERSHIP: In the event of the transfer of Landlord's title or interest in the premises, Landlord shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any applicable funds in the hands of Landlord at the time of the transfer shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall be binding on Lessor's successors and assigns during their period of ownership.

29. NOTICES: Except as otherwise specified herein, all notices and other communications between Landlord and Tenant shall be considered as having been made or delivered when deposited in the United States mail and sent by certified mail, return receipt requested. The delivery address for such notices is as follows. If given to Landlord, the same shall be mailed to:

ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY
6355 Centre Park Drive
West Chester, Ohio 45069
Attn: Mr. Lawrence Schumacher

If given to Tenant, the same shall be mailed to:

AtriCure, Inc.
6033 Schumacher Park Drive
West Chester, Ohio 45069
Attn: Mr. Michael D. Hooven, President

30. ENTIRE AGREEMENT; AMENDMENT. This Lease contains the entire agreement of the parties with respect to the Leased Premises. This Lease may be modified only by written agreement signed by both Tenant and Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:

LANDLORD:
ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY

/s/ Kimberly K. Meece

/s/ Christine R. Johnson

By: /s/ Lawrence Schumacher

Lawrence Schumacher, Manager

TENANT:
ATRICURE, INC.

/s/ Kimberly K. Meece

By: /s/ Michael D. Hooven

/s/ Christine R. Johnson

STATE OF OHIO )
) SS:
COUNTY OF BUTLER )

BE IT REMEMBERED, that on the 18th day of Dec, 2000, personally appeared before me, Lawrence Schumacher, Manager of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, and acknowledged to me that he executed the foregoing instrument on behalf of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, that he was duly authorized therefor, and that the same was his free act and deed and that of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Kimberly K. Meece

Notary Public

KIMBERLY K. MEECE
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2004

STATE OF Ohio )
) SS:
COUNTY OF Butler )

BE IT REMEMBERED, that on the 18th day of Dec, 2000, personally appeared before me Michael D. Hooven, President of AtriCure, Inc. and acknowledged to me that he executed the foregoing instrument on behalf of AtriCure, Inc., and that he was duly authorized therefor, and that the same was his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Kimberly K. Meece

Notary Public

KIMBERLY K. MEECE
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2004

GUARANTY

Enable Medical Corporation, does hereby absolutely and unconditionally guarantee the prompt and full payment to the Landlord when due of all amounts due under this Lease, and the performance of all covenants of Tenant hereunder, and the Landlord shall not be required to pursue any remedies against the Tenant prior to demanding payment from or pursuing its remedies against the Guarantor. Guarantor waives diligence, demand for payment or performance, extension of time for payment or performance, and notice of nonpayment or nonperformance, as well as all notices of any kind and consents to forbearance, extensions of time for payment or performance and modifications of same. Guarantor agrees that his obligations are primary, and shall not be impaired, modified or released by any waiver, modification, release or limitation of liability of Tenant. This Guaranty shall inure to the benefit of Landlord, its successors and assigns.

WITNESSES:

/s/ Kimberly K. Meece

/s/ Christine R. Johnson

GUARANTOR:
ENABLE MEDICAL CORPORATION

By: /s/ Michael D. Hooven

Michael D. Hooven, President

STATE OF OHIO )
) SS:
COUNTY OF BUTLER )

BE IT REMEMBERED, that on the 18th day of Dec, 2000, personally appeared before me, Michael D. Hooven, President of Enable Medical Corporation, and acknowledged to me that he executed the foregoing instrument on behalf of Enable Medical Corporation, that he was duly authorized therefor, and that the same was his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Kimberly K. Meece

Notary Public

KIMBERLY K. MEECE
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2004

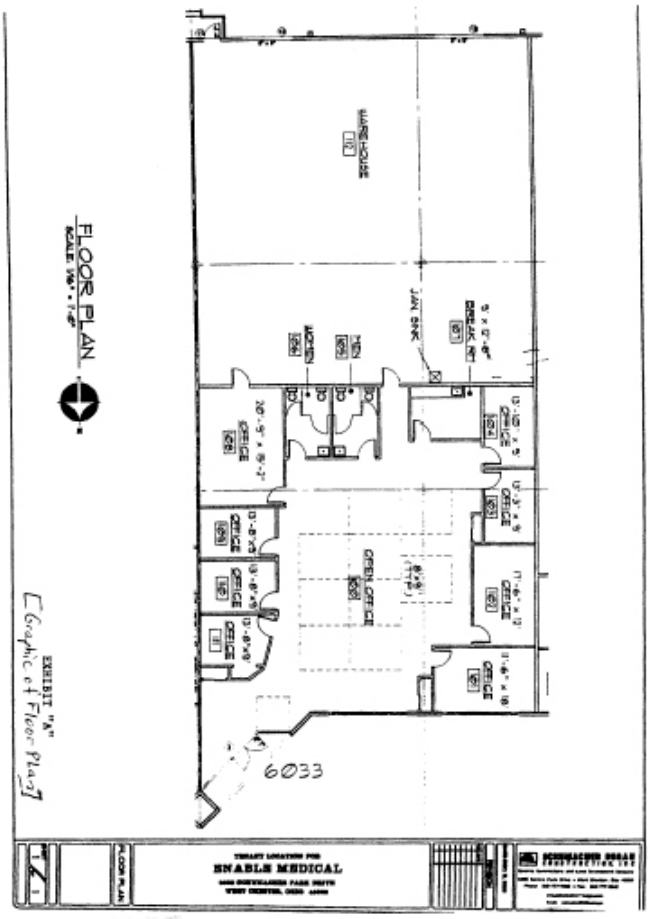

FLOOR PLAN
EXHIBIT "A"
Graphic of Floor Plan
6033
ENABLE MEDICAL

**EXHIBIT 10.6.1**

**AGREEMENT TO IMPROVE LEASED PREMISES**
**FIRST AMENDMENT TO LEASE DATED DECEMBER 18, 2000**

THIS AGREEMENT TO IMPROVE LEASED PREMISES (the "Agreement") is made as of May 28, 2002 by and between ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, ("Landlord"), an Ohio limited liability company, and ATRICURE, INC., ("Tenant"), an Ohio corporation, under the following circumstances:

A. By Lease dated as of December 18, 2000, ("the Lease"), Landlord leased to Tenant approximately 7,311 square feet of space (3,500 square feet offices and 3811 square feet of warehouse) in Building Five of Schumacher Commerce Park, located at 6033 Schumacher Park Drive, West Chester, Ohio 45069 (the "Leased Premises");

B. Tenant now desires Landlord to improve the Leased Premises by building out approximately 2,150 additional square feet of office space within the Leased Premises, as provided herein;

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 4 ("Location and Leased Premises") is revised to indicate that the Leased Premises shall now include 5,650 square feet of office and 1,661 square feet of warehouse space (7,311 square feet total) located at 6033 Schumacher Park Drive, West Chester, Ohio 45069, as identified on the space plan labeled Exhibit "A" attached to and made a part of this Lease Amendment. Landlord shall commence build out of the additional 2,150 square feet of office area within the Leased Premises, as shown on Exhibit "A", upon execution of this Lease Amendment and shall diligently pursue said construction to completion.

2. The first paragraph of Section 8 of the Lease is revised to read as follows:

**"8. BASE RENT AND LATE PAYMENT CHARGES:** Tenant shall pay Landlord the following rentals:

| Lease Year | Monthly Base Rent | Annual Base Rent |
|---|---|---|
| 03/01/01 - 02/28/02 | $ 3,738.42 | $ 44,861.04 |
| 03/01/02 - 05/31/02 | $ 3,738.42 | $ |
| 06/01/02 - 02/28/03 | $ 5,663.96 | $ |
| 03/01/03 - 02/28/04 | $ 5,663.96 | $ 67,967.52 |
| 03/01/04 - 02/28/05 | $ 5,663.96 | $ 67,967.52 |
| 03/01/05 - 02/28/06 | $ 5,663.96 | $ 67,967.52 |

3. Section 12 of the Lease ("Security Deposit") is amended to indicate the security deposit is hereby increased from the amount of Three Thousand Seven Hundred Thirty-eight and 42/100 Dollars ($3,738.42) to the amount of Five Thousand Six Hundred Sixty-three and 96/100 Dollars ($5,663.96).

4. Landlord and Tenant each represent and warrant to the other that no commission shall be due any party in connection with the making and execution of this First Amendment to Lease.

5. Except as amended herein, all terms and provisions of the Lease dated December 18, 2000 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Lease as of the date first written above.

WITNESSES:

/s/ Kimberly K. Meece

/s/ Christina R. Johnson

LANDLORD:
ALLEN ROAD PROPERTIES LIMITED
LIABILITY COMPANY

By: /s/ Mark Schumacher

Mark Schumacher, Authorized Member

TENANT:
ATRICURE, INC.

/s/ [ILLEGIBLE]

/s/ Laura C. Ball

By: /s/ Michael Hooven

Michael Hooven, President

**STATE OF OHIO )**
**) SS:**
**COUNTY OF BUTLER )**

**BE IT REMEMBERED**, that on the 28th day of May, 2002, personally appeared before me, Mark Schumacher, Authorized Member of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY and acknowledged to me that he executed the foregoing instrument on behalf of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY that he was duly authorized therefor, and that the same was his free act and deed and that of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Christina R. Johnson

Notary Public

Christina R. Johnson
Notary Public State of Ohio
My Commission Expires Oct. 29, 2002

**STATE OF OHIO** )
) **SS:**
**COUNTY OF BUTLER** )

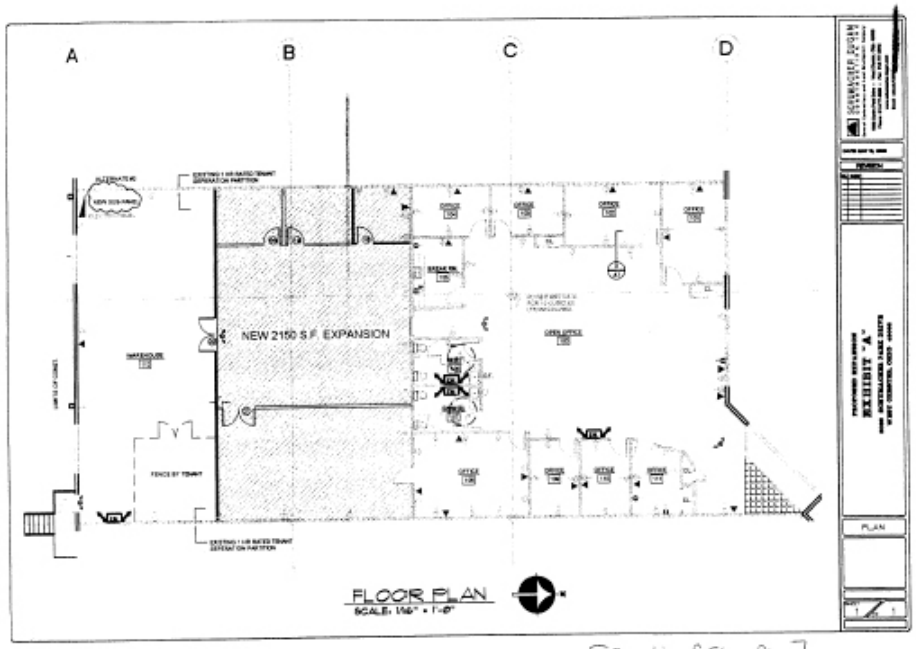
**BE IT REMEMBERED**, that on the 28th day of May, 2002, personally appeared before me Michael Hooven, President of ATRICURE, INC., and acknowledged to me that he executed the foregoing instrument on behalf of ATRICURE, INC., and that he was duly authorized therefor, and that the same was his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Christina R. Johnson

Notary Public

Christina R. Johnson
Notary Public State of Ohio
My Commission Expires Oct. 29, 2002




[Graphic of Floor Plan]

**EXHIBIT 10.6.2**

**AGREEMENT TO EXPAND LEASED PREMISES AND EXTEND LEASE**
**SECOND AMENDMENT TO LEASE DATED DECEMBER 18, 2000**

THIS AGREEMENT TO EXPAND THE LEASED PREMISES AND EXTEND LEASE (the "Agreement") is made as of April 8, 2004 by and between ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, ("Landlord"), an Ohio limited liability company, and ATRICURE, INC., ("Tenant"), an Ohio corporation, under the following circumstances:

A. By Lease dated as of December 18, 2000, ("the Lease"), Landlord leased to Tenant approximately 7,311 square feet of space (3,500 square feet of offices and 3,811 square feet of warehouse) in Building Five of Schumacher Commerce Park, located at 6033 Schumacher Park Drive, West Chester, Ohio 45069 (the "Leased Premises");

B. By First Amendment to Lease dated May 28, 2002, Landlord improved the Leased Premises by building out approximately 2,150 additional square feet of office space within the Leased Premises;

C. Tenant now desires to expand and improve the Leased Premises as described herein; and

D. Landlord and Tenant now desire to extend and renew the Lease Term as provided herein.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 4 ("Location and Leased Premises") is revised to indicate that the Leased Premises shall now include 9,650 square feet of office and 2,572 square feet of warehouse space (12,222 square feet total) located at 6033 and 6035 Schumacher Park Drive, West Chester, Ohio 45069, as identified on the Floor Plan labeled Exhibit "A" attached to and made a part of this Lease Amendment. Landlord shall commence build out of the improvements to be made within the Leased Premises, as shown on Exhibit "A", at Landlord's expense, and shall diligently pursue said construction to completion by approximately June 1, 2004.

2. Section 6 ("Term of the Lease") shall be revised to indicate the Lease shall expire on May 31, 2009.

3. Effective June 1, 2004, the first paragraph of Section 7 of the Lease is revised to read as follows:

"7. BASE RENT AND LATE PAYMENT CHARGES: Tenant shall pay Landlord the following rentals:

| Lease Year | Monthly Base Rent | Annual Base Rent |
|---|---|---|
| 06/01/04 - 05/31/05 | $ 9,768.46 | $ 117,221.52 |
| 06/01/05 - 05/31/06 | $ 9,768.46 | $ 117,221.52 |
| 06/01/06 - 05/31/07 | $ 9,768.46 | $ 117,221.52 |
| 06/01/07 - 05/31/08 | $ 9,768.46 | $ 117,221.52 |
| 06/01/08 - 05/31/09 | $ 9,768.46 | $ 117,221.52" |

4. The second paragraph of Section 8 of the Lease ("Operating Cost Participation") is revised to read as follows:

"The total square footage of the Entire Premises is 53,577 square feet. Under this Lease Agreement the Tenant will occupy 22.8% (12,222 square feet/53,577) square feet of the Building, and be responsible for paying their share of operating costs. The Landlord is responsible for paying for the operating costs of any vacant space. Landlord estimates that operating costs through 2004 will be $1.10 per square foot of leased space, or a total additional rent of $1,120.35 per month. This estimated common area cost is billed monthly, but is adjusted on an annual calendar year basis to reflect the actual cost experienced. Bills will be adjusted accordingly if the actual operating cost varies from the estimated cost. Tenants will receive a detailed breakdown of expenses and adjustments by May 15th of the following year."

5. Section 9 ("Condition of Leased Premises and Improvements Thereto") is revised to indicate the Leased Premises, as expanded herein, shall be improved by Landlord, at Landlord's expense, as depicted on the Floor Plan attached hereto as Exhibit "A" and as described in Landlord's Outline Specification dated March 16, 2004 attached hereto as Exhibit "B" and made a part of this Lease Amendment.

6. Section 11 of the Lease ("Security Deposit") is amended to indicate the security deposit is hereby increased from the amount of Five Thousand Six Hundred Sixty-three and 96/100 Dollars ($5,663.96), to the amount of Nine Thousand Seven Hundred Sixty-eight and 46/100 Dollars ($9,768.46). Tenant shall pay the additional security deposit amount of Four Thousand One Hundred Four and 50/100 Dollars ($4,104.50) upon delivery of this Agreement to Landlord.

7. Landlord and Tenant each represent and warrant to the other that no commission shall be due any party in connection with the making and execution of this Second Amendment to Lease.

8. Except as amended herein, all terms and provisions of the Lease dated December 18, 2000, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Lease as of the date first written above.

WITNESSES:

/s/ Kimberly K. Meece

/s/ Christina R. Johnson

LANDLORD:
ALLEN ROAD PROPERTIES LIMITED
LIABILITY COMPANY

By: /s/ Mark Schumacher

Mark Schumacher, Authorized Member

TENANT:
ATRICURE, INC.

By: /s/ David J. Drachman

David J. Drachman, President & CEO

**STATE OF OHIO )**
**) SS:**
**COUNTY OF BUTLER )**

BE IT REMEMBERED, that on the 15th day of July, 2004, personally appeared before me, Mark Schumacher, Authorized Member of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY, and acknowledged to me that he executed the foregoing instrument on behalf of ALLEN ROAD PROPERTIES LIMITED LIABILITY COMPANY that he was duly authorized therefor, and that the same was his free act and deed and that of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Kimberly K. Meece

Notary Public

KIMBERLY K. MEECE
Notary Public, State of Ohio
My Commission Expires Nov. 27, 2004

**STATE OF OHIO** )
) **SS:**
**COUNTY OF BUTLER** )

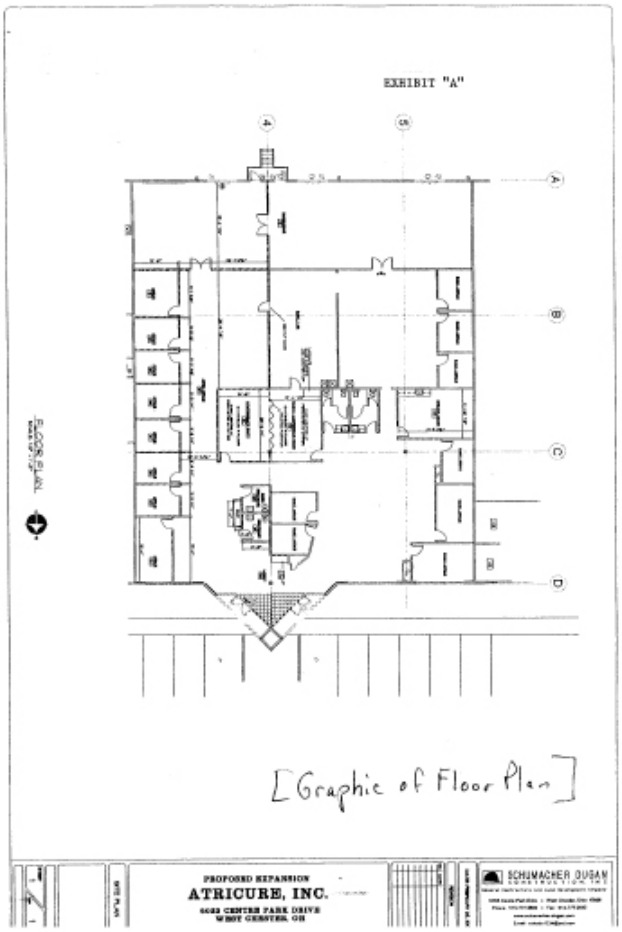
BE IT REMEMBERED, that on the 8th day of April, 2004, personally appeared before me David Drachman, President of ATRICURE, INC., and acknowledged to me that he executed the foregoing instrument on behalf of ATRICURE, INC., and that he was duly authorized therefor, and that the same was his free act and deed and that of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

/s/ Sarah C. Wichman (Luken)

Notary Public

SARAH C. LUKEN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-29-07




[Graphic of Floor Plan]

SCHUMACHER DUGAN
CONSTRUCTION, INC
General Contractors and Land Development Company

EXHIBIT “B”

February 25, 2004
Revised March 16, 2004

Atricure
6033 Schumacher Park Drive
West Chester, Ohio 45069
Attn: Sarah Wichman

Re: General Outline Specification

Dear Sarah:

Schumacher Dugan Construction, Inc. will provide all tools, labor, materials and supervision to complete the proposed tenant finish project at 6033 Schumacher Park Drive. Below is a general description of what will be included for this project.

- Permits and Drawings
- $2000 millwork allowance for conference room and display case.
- All walls to be constructed of steel studs and 5/8” thick gypsum board
- Restroom 102 & 101 will have insulated walls.
- Door frames to be hollow metal
- All interior doors to be solid wood pre-finished clear red oak with commercial grade hardware.
- 100 total S.F. of ceramic tile at entry at $7/s.f.
- $14/s.y carpet allowance at Offices 104-110, Conference Rm 111-112, Open Office 103.
- Vinyl composite tile at Break Rm 113.
- Carpet allowance of $18/s.y. at Lobby 100.
- 2 x 4 white square edge acoustic ceiling tile. Patch and repair as required.
- Existing toilet fixtures and hardware to be relocated and reused.
- HVAC consists of one 6.5 ton unit for new office space. One 2 ton unit at Conference Rm 111 similar to existing.
- Electric to be reconfigured from existing service at 6035 Schumacher Park Drive. Electric to include (38) 15 amp duplexes and (12) data rings.
- Lighting to match existing.
- Four recessed electric boxes at Conference Room.
- Twelve recessed incandescent fixtures on dimmers at Conference Room.
- Sprinkler system will be a standard wet system with chrome pendants per fire code.
- Two (2) 56” industrial ceiling fans mounted in warehouse.

This proposal is based on the attached drawing dated 2/25/04. Please call with any questions.

Sincerely,

SCHUMACHER DUGAN CONSTRUCTION, INC.

/s/ Doug Flack

Doug Flack

6355 Centre Park Drive West Chester, Ohio 45069 513-777-9800 Fax: 513-777-2642

# LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT NO. 4631** (this "*Agreement*") is entered into as of March 8, 2005, by and between **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** ("*Lender*") and **ATRTICURE, INC.,** a Delaware corporation ("*Borrower*") and sets forth the terms and conditions upon which Lencer will lend and Borrower will repay money. In consideration of the mutual covenants herein contained, the parties agree as follows:

## 1. DEFINITIONS AND CONSTRUCTION

**1.1 Definitions.** Initially capitalized terms used and not otherwise defined herein are defined in the California Uniform Commercial Code ("*UCC*").

"*ACH*" means the Automated Clearing House electronic funds transfer system.

"*Advance*" means a Loan advanced by Lender to Borrower hereunder.

"*Basic Rate*" means a variable *per annum* rate of interest equal to the Index plus the Interest Margin which shall be subject to adjustment as provided herein. On and after the Funding Date the Basic Rate shall be fixed and not subject to any further adjustments.

"*Borrower's Books*" means all of Borrower's books and records, including records concerning Collateral, Borrower's assets, liabilities, business operations or financial condition, on any media, and the equipment containing such information.

"*Collateral*" means: **(i)** all property listed on ***Exhibit A*** attached hereto; and **(ii)** all products and proceeds of the foregoing, including proceeds of insurance and proceeds of proceeds.

"*Commitment*" means $5,000,000.

"*Commitment Fee*" means $5,000.

"*Commitment Termination Date*" means the earliest to occur of **(i)** September 1, 2005; **(ii)** any Default or Event of Default, **(iii)** the date upon which Borrower does not employ at least 2 of the following 3 individuals: David Drachman, President and Chief Executive Officer; Mike Hooven, Chairman and Chief Technology Officer; or Sam Privitera, Vice President of Product Development; **(iv)** the date upon which Borrower shall not be in the business of developing and selling products that address atrial fibrillation; or **(v)** the date of the consummation of an initial public offering by the Borrower of its common stock to the public generally pursuant to a registration statement in an underwritten offering.

"*Control Agreement*" means an agreement substantially in the form *of **Exhibit I*** or otherwise acceptable to Lender.

"*Default*" means any event that with the passing of time or the giving of notice or both would become an Event of Default.

"*Default Rate*" means the lesser of 18% per annum or the highest rate permitted by applicable law.

"*Disclosure Schedule*" means the schedule attached as ***Schedule 1*** hereto.

"*Enable Merger*" means the merger of Enable Medical Corporation with and into the Borrower pursuant to the Agreement and Plan of Merger, dated as of February 14, 2005, among the Borrower, Enable Medical Corporation and Raymond W. Ogle, as representative of the stockholders of Enable Medical Corporation.

"*Enable Supply Agreement*" means the Master Development, Manufacturing and Supply Agreement, dated as of March 19, 2003, as amended, between Enable Medical Corporation and the Borrower, pursuant to which Enable Medical Corporation supplies the Borrower with certain development, manufacturing and supply services with respect to certain electrosurgical devices used in the Borrower's core business.

"*Event of Default*" is defined in **Section 8**.

"*Funding Date*" means any date on which an Advance is made to or on account of Borrower hereunder.

"*Indebtedness*" means **(i)** all indebtedness for borrowed money or the deferred purchase of property or services, **(ii)** all obligations evidenced by notes, bonds, debentures or similar instruments, **(iii)** all capital lease obligations, and **(iv)** all contingent obligations, including guaranties and obligations of reimbursement or respecting letters of credit.

"*Incumbency Certificate*" means the document in the form of ***Exhibit E***.

"*Index*" means the prevailing variable Prime Rate of annual interest as quoted from time to time in the western edition of the Wall Street Journal.

"*Interest Margin*" means 1.75% per annum.

"*Lender's Expenses*" means all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, modification, administration, or enforcement of the Loan or Loan Documents, or the exercise or preservation of any rights or remedies by Lender, whether or not suit is brought; *provided, however,* that Lender's Expenses for the preparation and negotiation of the initial set of Loan Documents shall not exceed $5,000. Lender will apply deposits received before the date hereof, if any, towards Lender's Expenses.

"*Lien*" means any lien, security interest, pledge, bailment, lease, mortgage, hypothecation, conditional sales and title retention agreement, charge, claim, or other encumbrance.

"*Liquidation Event*" means any of: **(i)** a merger of Borrower with another entity whereby the shareholders of Borrower owning at least 50% of the outstanding voting securities of Borrower immediately prior to such merger own less than 50% of the outstanding voting securities of Borrower immediately after such merger; **(ii)** the sale (in one or a series of related transactions) of all or substantially all of Borrower's assets; or **(iii)** any transaction (or series of related transactions) whereby the shareholders of Borrower immediately prior to such transaction(s) own less than 50% of the outstanding voting securities of Borrower immediately after such transaction(s)

"*Loan*" means all of the Advances, however evidenced, and all other amounts due or to become due hereunder.

"*Loan Commencement Date*" means September 1, 2005.

"*Loan Documents*" means, collectively, this Agreement, the Warrant, the Notes and all other documents, instruments and agreements entered into between Borrower and Lender in connection with the Loan, all as amended or extended from time to time.

"*Negative Pledge Agreement*" means an agreement in the form of ***Exhibit H***.

"*Note*" means a Secured Promissory Note in the form of ***Exhibit B***.

"*Notice of Borrowing*" means the form attached *as* ***Exhibit D***.

"*Obligations*" means all Loans, debt, principal, interest, fees, charges, Lender's Expenses and other amounts, obligations, covenants, and duties owing by Borrower to Lender of any kind or description (whether pursuant to the Loan Documents or otherwise (with the exception of the Warrant), and whether or not for the payment of money), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including any of the same obtained by Lender by assignment or otherwise, and all amounts Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise.

"*Permitted Indebtedness*" means: **(i)** the Loan; **(ii)** unsecured trade debt incurred in the ordinary course of Borrower's business and **(iii)** Indebtedness secured by clauses (ii) and (v) of Permitted Liens.

"*Permitted Liens*" means: **(i)** Liens in favor of Lender; **(ii)** Liens disclosed in the Disclosure Schedule; **(iii)** Liens for taxes, fees, assessments or other governmental charges or levies not delinquent or being contested in good faith by appropriate proceedings, that do not jeopardize Lender's interest in any Collateral; **(iv)** Liens to secure payment of worker's compensation, employment insurance, old age pensions or other social security obligations of Borrower on which Borrower is current and are in the ordinary course of its business; provided none of the same diminish or impair Lender's rights and remedies respecting the Collateral and **(v)** Liens upon or in any equipment acquired or held by Borrower to secure the purchase price of such equipment or indebtedness incurred solely for the purposes of financing the acquisition of such equipment, *provided that* (a) any Liens for such Indebtedness are confined to the equipment financed, (b) does not exceed $1,000,000 and (c) such Indebtedness is made on commercially reasonable terms.

"*Regulated Substance*" means any substance, material or waste the use, generation, handling, storage, treatment or disposal of which is regulated by any local or state government authority, including any of the same designated by any authority as hazardous, genetic, cloning, fetal, or embryonic.

"*Responsible Officer*" means each person as authorized by the board of directors of Borrower as set forth on the Incumbency Certificate.

"*Term*" means the period from and after the date hereof until the full, final and indefeasible payment and performance of all Obligations.

"*Warrant*" means the Warrant in favor of Lender and its affiliates to purchase securities of Borrower substantially in the form of ***Exhibit** C.*

**1.2 Interpretation.** References to "Articles," "Sections," "Exhibits," and "Schedules" are to articles, sections, exhibits and schedules herein and hereto unless otherwise indicated. "Hereof," "herein" and "hereunder" refer to this Agreement as a whole. "Including" is not limiting. All accounting and financial computations shall be computed in accordance with generally accepted accounting principles consistently applied *("GAAP").* "Or" is not necessarily exclusive. All interest computation interest shall be based on a 360-day year and actual days elapsed.

## 2. THE LOANS

**2.1 Commitment.** Subject to the terms hereof, Lender will make Advances to Borrower up to the principal amount of the Commitment, before the Commitment Termination Date. Notwithstanding anything in the Loan Documents to the contrary, Lender's obligation to make any Advances or to lend the undisbursed portion of the Commitment shall terminate on the Commitment Termination Date. Repaid principal of the Advances may not be re-borrowed.

**2.2 The Advances.** A Note setting forth the specific terms of repayment will evidence each Advance. No Advance will be made for less than $500,000, unless less than $500,000 remains available under the Commitment for borrowing. Absence of a Note evidencing any portion of the Loan shall not impair Borrower's obligation to repay it to Lender.

**2.3 Terms of Payment, Repayment.**

**(a) Repayment.** Borrower shall repay the principal and pay interest on each Advance on the terms set forth the applicable Note. Amounts not paid within 1 day after the date when they become due hereunder or under the Note shall bear interest at the Default Rate. If a court of competent jurisdiction determines that Lender has received payments that, if interest, would exceed the maximum lawfully permitted, Lender will instead apply such money to fees and expenses and then to early prepayment of principal. Each Note shall provide that it may be pre-paid in whole at any time without penalty.

**(b) ACH.** All payments due to Lender must be, at Lender's option, paid to Lender in cash or through ACH. Borrower shall execute and deliver the ACH Authorization Form substantially in the form of ***Exhibit G.*** If the ACH payment arrangement is terminated for any reason, Borrower shall make all payments due to Lender at Lender's address specified in **Section 11.**

**(c) Default Rate.** While an Event of Default has occurred and is continuing, interest on the Loan shall be increased to the Default Rate. Lender's failure to charge or accrue interest at the Default Rate during the existence of a Default shall not be deemed a waiver by Lender of its right or claim thereto.

**(d) Date.** Whenever any payment due under the Loan Documents is due on a day other than a business day, such payment shall be made on the next succeeding business day, and such extension of time shall be included in the computation of interest or fees, as the case may be.

**2.4 Fees.** Borrower shall pay to Lender the following;

**(a) Commitment Fee.** The Commitment Fee, which has been previously paid by Borrower, and shall be applied by Lender to Lender's Expenses and other Obligations;

**(b) Late Fee.** On demand, a late charge on any sums due hereunder that are not paid within 1 day after the date when due, in an amount equal to 2% of the past due amount, payable on demand.

**(c) Lender's Expenses.** When requested, all Lender's Expenses. Lender's Expenses not paid when due shall bear interest as principal at the Default Rate.

## 3. Conditions Of Advances; Procedure For Requesting Advances

**3.1 Conditions Precedent to any and all Advances.** The obligation of Lender to make any Advances is subject to each and every of the following conditions precedent in form and substance satisfactory to Lender in its sole discretion: **(i)** this Agreement, a Note evidencing the Advance, the Warrant, and all other UCC financing statements, and other documents required or as specified herein have been duly authorized, executed and delivered; **(ii)** no Default or Event of Default has occurred and is continuing; **(iii)** delivery of a Notice of Borrowing with respect to the proposed Advance; **(iv)** Lender's security interests in the Collateral are valid and first priority, except for Permitted Liens; and **(v)** all such other items as Lender may reasonably deem necessary or appropriate have been delivered or satisfied. The extension of an Advance prior to the receipt by Lender of any of the foregoing shall not constitute a waiver by Lender of Borrower's obligation to deliver such item.

**3.2 Procedure for Making Advances.** For any Advance, Borrower shall provide Lender an irrevocable Notice of Borrowing at least 5 business days prior to the desired Funding Date and Lender shall only be required to make Advances hereunder based upon written requests which comply with the terms and exhibits of this Loan Agreement (as the same may be amended from time to time), and which are submitted and signed by a Responsible Officer. Borrower shall execute and deliver to Lender a Note and such other documents and instruments as Lender may reasonably require for each Advance made.

## 4. Creation of Security Interest

**4.1 Grant of Security Interest.** Borrower grants to Lender a valid, first priority, continuing security interest in all present and future Collateral in order to secure prompt, full, faithful and timely payment and performance of all Obligations.

**4.2 Inspections.** Lender shall have the right upon reasonable prior notice to inspect Borrower's Books, including computer files, and to make copies, and to test, inspect and appraise the Collateral, in order to verify any matter relating to Borrower or the Collateral.

**4.3 Authorization to File Financing Statements.** Borrower irrevocably authorizes Lender at any time and from time to time to file in any jurisdiction any financing statements and amendments that: **(i)** name Collateral as collateral thereunder, regardless of whether any particular Collateral falls within the scope of the UCC; **(ii)** contain any other information required by the UCC for sufficiency or filing office acceptance, including organization identification numbers; and **(iii)** contain such language as Lender determines helpful in protecting or preserving rights against third parties. Borrower ratifies any such filings made prior to the date hereof.

## 5. Representations and Warranties

Borrower represents, warrants and covenants as follows:

**5.1 Due Organization and Qualification.** Borrower is a corporation duly formed, existing and in good standing under the laws of its state of incorporation and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified or in which the Collateral is located.

**5.2 Authority.** Borrower has all corporate power and authority, and has taken all actions, and has obtained all third party consents necessary to execute, deliver, and perform the Loan Documents.

**5.3 Disclosure Schedule.** All information on the Disclosure Schedule is true, correct and complete.

**5.4 Authorization; Enforceability.** The execution and delivery hereof, the granting of the security interest in the Collateral, the incurring of the Obligations, the execution and delivery of all Loan Documents and the consummation of the transactions herein and therein contemplated have been duly authorized by all necessary action by Borrower. The Loan Documents constitute legal, valid and binding obligations of Borrower, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy or similar laws relating to enforcement of creditors' rights generally.

**5.5 Name and Location.** Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office, principal place of business, and the place where Borrower maintains its records concerning the Collateral is set forth in **Section 11**. The Collateral is presently located at the address(es) set forth in **Section 11** and on the Disclosure Schedule.

**5.6 Litigation.** All actions or proceedings pending by or against Borrower before any court or administrative agency are set forth on the Disclosure Schedule.

**5.7 Financial Statements.** All financial statements fairly represent the financial condition of the Borrower. All statements respecting Collateral that have been or may hereafter be delivered by Borrower to Lender are true, complete and correct in all material respects for the periods indicated.

**5.8 Solvency.** Borrower is solvent and able to pay its debts (including trade debts) as they come due.

**5.9 Taxes.** Borrower has filed and will file all required tax returns, and has paid and will pay all taxes it owes other than where the failure to comply would not reasonably be expected to have an adverse effect on Borrower.

**5.10 Rights; Title to Assets.** Borrower possesses and owns all necessary assets, rights, trademarks, trade names, copyrights, patents, patent rights, franchises and licenses which it needs to conduct of its business as now operated or proposed to be operated. Borrower has good title to its assets, free and clear of any Liens, except for Permitted Liens.

**5.11 Full Disclosure.** No written representation, warranty or other statement made by Borrower in any Loan Document, certificate or statement furnished to Lender contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading.

**5.12 Regulated Substances.** Borrower complies and will comply with all laws respecting Regulated Substances.

**5.13 Reaffirmation.** Each Notice of Borrowing will constitute **(i)** a warranty and representation in favor of Lender that there does not exist any Default and **(ii)** a reaffirmation as of the date thereof of all of the representations and warranties contained in this Agreement and the Loan Documents.

## 6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that it shall do all of the following:

**6.1 Good Standing and Compliance.** Borrower shall maintain all governmental licenses, rights and agreements necessary for its operations or business and comply in all material respects with all statutes, laws, ordinances and government rules and regulations to which it is subject.

**6.2 Financial Statements, Reports, Certificates.** Borrower shall deliver to Lender: **(i)** so long as Borrower is not subject to the reporting requirements of Section 12 of the Securities and Exchange Act of 1934, as amended, as soon as prepared, and no later than 30 days after the end of each calendar month, a balance sheet, income statement and cash flow statement covering Borrower's operations during such period; **(ii)** so long as Borrower is not subject to the reporting requirements of Section 12 of the Securities and Exchange Act of 1934, as amended, as soon as prepared, but no later than 90 days after the end of the fiscal year, audited financial statements prepared in accordance with GAAP, together with an opinion that such financial statements fairly present Borrower's financial condition by an independent public accounting firm reasonably acceptable to Lender; **(iii)** immediately upon notice thereof, a report of any legal or administrative action pending or threatened against Borrower which is likely to result in liability to Borrower in excess of $75,000; and **(iv)** such other financial information as Lender may reasonably request from time to time. Financial statements delivered pursuant to subsections **(i)** and **(ii)** above shall be accompanied by a certificate signed by a Responsible Officer (each an "*Officer's Certificate")* in the form of ***Exhibit F.***

**6.3 Notice of Defaults.** Upon any Default or Event of Default, an Officer's Certificate setting forth the facts relating to or giving rise thereto, and the Borrower's proposed action with respect thereto.

**6.4 Use; Maintenance.** Borrower, at its expense, shall **(i)** maintain the Collateral in good condition, reasonable wear and tear excepted, and will comply in all material respects with all laws, rules and regulations regarding use and operation of the Collateral and **(ii)** repair or replace any lost or damaged Collateral.

**6.5 Insurance.** Borrower, at its own expense, shall maintain insurance in amounts and coverages reasonably satisfactory to Lender. Each insurance shall: **(i)** name Lender loss payee or additional insured, as appropriate, **(ii)** provide for insurer's waiver of its right of subrogation against Lender and Borrower, **(iii)** provide that such insurance shall not be invalidated by any action of or breach of warranty by, Borrower and waive set-off, counterclaim or offset against Lender, **(iv)** be primary without a right of contribution of

Lender's insurance, if any, or any obligation on the part of Lender to pay premiums of Borrower, and **(v)** require the insurer to give Lender at least 30 days prior written notice of cancellation. Borrower shall furnish all certificates of insurance required by Lender.

**6.6 Loss Proceeds.** So long as no Event of Default has occurred and is continuing, any proceeds of insurance on or condemnation of Collateral shall, at Borrower's election and so long as Lender's security interest in such proceeds remains first priority, be used either to repair or replace such Collateral or otherwise applied to the purchase or acquisition of property useful to Borrower's business.

**6.7 Further Assurances.** At any time and from time to time, Borrower shall execute and deliver such further instruments and take such further action as Lender may reasonably request to effect the intent and purposes hereof, to perfect and continue perfected and of first priority Lender's security interests in the Collateral, and to effect and maintain ACH payment arrangements.

## 7. NEGATIVE COVENANTS

Borrower will not do any of the following:

**7.1 Location of Collateral.** Change its chief executive office or principal place of business or remove, except in the ordinary course of Borrower's business, the Collateral or Borrower's Books from the premises listed in **Section 11** without giving 30 days prior written notice to Lender.

**7.2 Extraordinary Transactions.** Enter into any transaction not in the ordinary course of Borrower's business, including the sale, lease, license or other disposition of its assets, other than **(i)** sales of inventory in the ordinary course of Borrower's business; **(ii)** licenses of Borrower's intellectual property assets entered into in the ordinary course of business,; **(iii)** an initial public offering by the Borrower of its common stock to the public generally pursuant to a registration statement in an underwritten offering; **(iv)** the Enable Merger; and **(v)** purchases of products and services pursuant to the Enable Supply Agreement.

**7.3 Restructure.** Make any material change in Borrower's financial structure or business operations (other than through the sale of preferred stock to equity investors which does not result in a change of control of Borrower, through an initial public offering by the Borrower of its Common Stock to the public generally pursuant to a registration statement in an underwritten offering; or pursuant to the Enable Merger); cause a Liquidation Event; or suspend operation of Borrower's business.

**7.4 Liens.** Create, incur, assume or suffer to exist any Lien of any kind with respect to any of its property, whether now owned or hereafter acquired, except for Permitted Liens.

**7.5 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, other than Permitted Indebtedness or cause or suffer any Subsidiary to create, incur, assume or suffer to exist any Indebtedness, other than Permitted Indebtedness.

**7.6 Distributions.** Pay any dividends or distributions, or redeem or purchase, any capital stock, except for repurchases of capital stock from departing employees or directors, under repurchase agreements approved by the Borrower's Board of Directors

**7.7 Transactions with Affiliates.** Directly or indirectly enter into any transaction with any affiliate which is on terms less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated entity; *provided*, any such transaction shall not be a breach of this **Section 7.7** if approved by a disinterested majority of the Borrower's Board of Directors.; and *provided, further,* that purchases of products and services pursuant to the Enable Supply Agreement shall not be a breach of this **Section 7.7.**

**7.8 Compliance. (i)** Become an " investment company" under the Investment Company Act of 1940 or extend credit to purchase or carry margin stock; **(ii)** fail to meet the minimum funding requirements of ERISA; **(iii)** permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; **(iv)** fail to comply with the Federal Fair Labor Standards Act; or **(v)** violate any other material law or material regulation.

**7.9 UCC Effectiveness.** Change its name, jurisdiction of organization, or take any other action that could render Lender's financing statements misleading under the Code, without giving Lender 30 days advance written notice.

**7.10 Deposit and Securities Acccounts.** Maintain any deposit accounts or accounts holding securities owned by Borrower except accounts in which Lender has obtained a perfected first priority security interest.

## 8. EVENTS OF DEFAULT

Any one or more of the following shall constitute an Event of Default by Borrower hereunder:

**8.1 Payment.** Borrower fails to pay within 1 day after the date when due and payable in accordance with the Loan Documents any portion of the Obligations, or cancels an ACH payment or transfer Lender has initiated in conformity with the terms hereof *provided*, *however*, that an Event of Default shall not occur on account of a failure to pay due solely to an administrative or operational error if Borrower had the funds to make the payment when due and makes the payment the business day following Borrower's knowledge of such failure to pay.

**8.2 Certain Covenant Defaults.** Borrower fails to perform any obligation under **Section 6.5** or **6.6,** or violates any of the covenants contained in **Section 7.**

**8.3 Other Covenant Defaults.** Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement, in any of the other Loan Documents, or in any other present or future agreement between Borrower and Lender and has failed to cure such failure within 15 days after its occurrence.

**8.4 Attachment.** Any material portion of Borrower's assets is attached, seized, subjected to a government levy, lien, writ or distress warrant, or comes into the possession of any trustee or receiver and the same is not returned, removed, waived, stayed, discharged or rescinded within 10 days.

**8.5 Other Agreements.** There is a default in any agreement to which Borrower is a party, subject to any applicable cure periods resulting in a right by a third party, whether or not exercised, to accelerate the maturity of any Indebtedness, in an amount greater than $100,000.

**8.6 Judgments.** One or more judgments for an aggregate of at least $75,000 is rendered against Borrower and remains unsatisfied and unstayed for more than 30 days.

**8.7 Injunction.** Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct any material part of its business affairs, or if a judgment or other claim becomes a Lien upon any material portion of Borrower's assets.

**8.8 Misrepresentation.** Any representation, statement, or report made to Lender by Borrower was false or misleading when made in any material respect.

**8.9 Enforceability.** Lender's ability to enforce its rights against Borrower or any Collateral is impaired in any material respect, or Borrower asserts that any Loan Document is not a legal, valid and binding obligation of Borrower enforceable in accordance with its terms.

**8.10 Involuntary Bankruptcy.** An involuntary bankruptcy case remains undismissed or unstayed for 30 days or, if earlier, an order granting the relief sought is entered.

**8.11 Voluntary Bankruptcy or Insolvency.** Borrower commences a voluntary case under applicable bankruptcy or insolvency law, consents to the entry of an order for relief in an involuntary case under any such law, or consents or is subject to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or other similar official of Borrower or any substantial part of its property, or makes an assignment for the benefit of creditors, or fails generally or admits in writing to its inability to pay its debts as they become due, or takes any corporate action in furtherance of any of the foregoing.

**8.12 Merger without Assumption.** Borrower or all or substantially all of Borrower's assets are acquired by or merged into any other business entity where more than 50% of Borrower's voting power is transferred by existing shareholders of Borrower and such acquirer or resulting entity either: **(i)** does not pay off the Obligations at the closing of the acquisition, merger or sale; or **(ii)** does not provide an unconditional, unlimited guaranty of the Obligations in form and substance satisfactory to Lender and is of a credit quality unacceptable to Lender.

## 9. LENDER'S RIGHTS AND REMEDIES

**9.1 Rights and Remedies.** Upon the occurrence and continuance of any Event of Default, Lender may, at its election, without notice of election and without demand, do any one or more of the following, all of which are authorized by Borrower: **(i)** accelerate and declare the Loan and all Obligations immediately due and payable; **(ii)** make such payments and do such acts as Lender considers necessary or reasonable to protect its security interest in the Collateral, with such amounts becoming Obligations bearing interest at the Default Rate; **(iii)** exercise any and all other rights and remedies available under the UCC or otherwise; (iv) require Borrower to assemble the Collateral at such places as Lender may designate; **(v)** enter premises where any Collateral is located, take, maintain possession of, or render unusable the Collateral or any part of it; **(vi)** without notice to Borrower, set off and recoup against any portion of the Obligations; **(vii)** ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral, in connection with which Borrower hereby grants Lender a license to use without charge Borrower's premises, labels, name, trademarks, and other property necessary to complete, advertise, and sell any Collateral; and **(viii)** sell the Collateral at one or more public or private sales.

**9.2 Power of Attorney in Respect of the Collateral.** Borrower hereby irrevocably appoints Lender (which appointments coupled with an interest) its true and lawful attorney in fact with full power of substitution, for it and in its name to, upon an Event of Default: **(i)** ask, demand, collect, receive, sue for, compound and give acquittance for any and all Collateral with full power to settle, adjust or compromise any claim, **(ii)** receive payment of and endorse the name of Borrower on any items of Collateral, **(iii)** make all demands, consents and waivers, or take any other action with respect to, the Collateral, **(iv)** file any claim or take any other action, in Lender's or Borrower's name, which Lender may reasonably deem appropriate to protect its rights in the Collateral, or **(v)** otherwise act with respect to the Collateral as though Lender were its outright owner.

**9.3 Charges.** If Borrower fails to pay any amounts required hereunder to be paid by Borrower to any third party, Lender may at its option pay any part thereof and any amounts so paid including Lender's Expenses incurred shall become Obligations, immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Any such payments by Lender shall not constitute an agreement to make similar payments or a waiver of any Event of Default.

**9.4 Remedies Cumulative.** Lender's rights and remedies under the Loan Documents and all other agreements with Borrower shall be cumulative. Lender shall have all other rights and remedies as provided under the UCC, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence.

**9.5 Application of Collateral Proceeds.** Lender will apply proceeds of sale, to the extent actually received in cash, in the manner and order it determines in its sole discretion, and as prescribed by applicable law.

## 10. WAIVERS; INDEMNIFICATION

**10.1 Waivers.** Without limiting the generality of the other waivers made by Borrower herein, to the maximum extent permitted under applicable law, Borrower hereby irrevocably waives all of the following: **(i)** any right to assert *against Lender* as defense, counterclaim, set-off or crossclaim, any defense (legal or equitable), set-off, counterclaim, crossclaim and/or other claim (a) which Borrower may now or at any time hereafter have against any party liable to Lender in any way or manner, or (b) arising directly or indirectly from the present or future lack of perfection, sufficiency, validity and/or enforceability of any Loan Document, or any security interest; **(ii)** presentment, demand and notice of presentment, dishonor, notice of intent to accelerate, protest, default, non payment, maturity, release, compromise, settlement, extension or renewal of any or all accounts, documents, instruments, chattel paper and guaranties at any time held by Lender on which Borrower may in any way be liable and hereby ratifies and confirms whatever Lender may do in this regard; **(iii)** the benefit of all marshalling, valuation, appraisal and exemption laws; **(iv)** the right, if any, to require Lender to (a) proceed against any person liable for any of the Obligations as a condition to or before proceeding hereunder; or (b) foreclose upon, sell or otherwise realize upon or collect or apply any other property, real or personal, securing any of the Obligations, as a condition to, or before proceeding hereunder; **(v)** any demand for possession before the commencement of any suit or action to recover possession of Collateral; and **(vi)** any requirement that Lender retain possession and not dispose of Collateral until after trial or final judgment.

**10.2 Lender's Liability for Collateral.** Lender shall not in any way or manner be liable or responsible for: **(i) the** safekeeping of any Collateral; (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause; **(iii)** any diminution in the value thereof; or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person or entity whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower. Lender will have no responsibility for taking any steps to preserve rights against any parties respecting any Collateral. Lender's powers hereunder are conferred solely to protect its interest in the Collateral and do not impose any duty to exercise any such powers. None of Lender or any of its officers, directors, employees, agents or counsel will be liable for any action lawfully taken or omitted to be taken hereunder or in connection herewith

(excepting gross negligence or willful misconduct), nor under any circumstances have any liability to Borrower for lost profits or other special, indirect, punitive, or consequential damages. Lender retains any documents delivered by Borrower only for its purposes and for such period as Lender, at its sole discretion, may determine necessary, after which time Lender may destroy such records without notice to or consent from Borrower.

**10.3 Indemnification.** Borrower shall, on an after tax basis, defend, indemnify, and hold Lender and each of its officers, directors, employees, counsel, partners, agents and attorneys-in-fact (each, an "*Indemnified Person*") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including Lender's Expenses and reasonable attorney's fees and the allocated cost of in-house counsel) of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Documents, or the transactions contemplated hereby and thereby, with respect to noncompliance with laws or regulations respecting Regulated Substances, government secrecy or technology export, or any Lien not created by Lender or right of another against any Collateral, even if the Collateral is foreclosed upon or sold pursuant hereto, and with respect to any investigation, litigation or proceeding before any agency, court or other governmental authority relating to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided, that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of such Indemnified Person. The obligations in this Section shall survive the Term. At this election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person, at the sole cost and expense of Borrower. All amounts owing under this Section shall be paid within 30 days after written demand.

## 11. NOTICES

All notices shall be in writing and personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by confirmed facsimile, at the respective addresses set forth below:

| If to Borrower: | If to Lender: |
|---|---|
| AtriCure, Inc.<br>6033 Schumacher Park Drive<br>Cincinnati, Ohio 45069<br>Attention: Chief Financial Officer<br>FAX: (513) 755-4108 | Lighthouse Capital Partners V, LP<br>500 Drake's Landing Road<br>Greenbrae, California 94904<br>Attention: Contract Administrator<br>FAX: (415) 925-3387 |

## 12. GENERAL PROVISIONS

**12.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties' respective successors and permitted assigns. Borrower may not assign any rights hereunder without Lender's prior written consent, which consent may be granted or withheld in Lender's sole discretion. Lender shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participations in all or any part of any Loan Document.

**12.2 Time of Essence.** Time is of the essence for the performance of all Obligations.

**12.3 Severability of Provisions.** Each provision hereof shall be severable from every other provision in determining its legal enforceability.

**12.4 Entire Agreement.** This Agreement and each of the other Loan Documents dated as of the date hereof, taken together, constitute and contain the entire agreement between Borrower and Lender with respect to their subject matter and supersede any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral. This Agreement is the result of negotiations between and has been reviewed by the Borrower and Lender as of the date hereof and their respective counsel; *accordingly*, this Agreement shall be deemed to be the product of the parties hereto, and no ambiguity shall be construed in favor of or against Borrower or Lender. This Agreement may only be modified with the written consent of Lender. Any waiver or consent with respect to any provision of the Loan Documents shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any one case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

**12.5 Reliance by Lender.** All covenants, agreements, representations and warranties made herein by Borrower shall, notwithstanding any investigation by Lender, be deemed to be material to and to have been relied upon by Lender.

**12.6 No Set-Offs by Borrower.** All sums payable by Borrower pursuant to this Agreement or any of the other Loan Documents shall be payable without notice or demand and shall be payable in United States Dollars without set-off or reduction of any manner whatsoever.

**12.7 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same original instrument.

**12.8 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding.

**12.9 No original Issue Discount.** Borrower and Lender acknowledge and agree that the Warrant is part of an investment unit within the meaning of Section 1273(c)(2) of the Internal Revenue Code, which includes the Loan. Borrower and Lender further agree as between them, that the fair market value of the Warrant and the balance shall be allocable to the Loans.

agree to prepare their federal income tax returns in a manner consistent with the foregoing and, pursuant to Treas. Reg. § 1.1273, the original issue discount on the Loan shall be considered to be zero.

**12.10 Relationship of Parties.** The relationship between Borrower and Lender is, and at all times shall remain, solely that of a borrower and lender. Lender is not a partner or joint venturer of Borrower; nor shall Lender under any circumstances be deemed to be in a relationship of confidence or trust or have a fiduciary relationship with Borrower or any of its affiliates, or to owe any fiduciary duty to Borrower or any of its affiliates. Lender does not undertake or assume any responsibility or duty to Borrower or any of its affiliates to select, review, inspect, supervise, pass judgment upon or otherwise inform any of them of any matter in connection with its or their property, the Loans, any Collateral or the operations of Borrower or any of its affiliates. Borrower and each of its affiliates shall rely entirely on their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Lender in connection with such matters is solely for the protection of Lender and neither Borrower nor any affiliate is entitled to rely thereon.

**12.11 Choice of Law and Venue; Jury Trial Waiver. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF BORROWER AND LENDER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA. BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

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

**ATRICURE, INC.**

By: /s/ David Drachman

Name: David Drachman

Title: President

**LIGHTHOUSE CAPITAL PARTNERS V, L.P.**

By: **LIGHTHOUSE MANAGEMENT PARTNERS V, L.L.C.,** its general partner

By: /s/ Thomas Conneely

Name: Thomas Conneely

Title: Vice President

| | |
|---|---|
| Exhibit A | Collateral Description |
| Exhibit B | Form of Note |
| Exhibit C | Form of Preferred Stock Warrant |
| Exhibit D | Form of Notice of Borrowing |
| Exhibit E | Form of Incumbency Certificate |
| Exhibit F | Form of Officers Certificate |
| Exhibit G | ACH Authorization |
| Exhibit H | Form of Negative Pledge Agreement |
| Exhibit I | Control Agreement |
| Schedule 1 | Disclosure Schedule |

**EXHIBIT A**

**COLLATERAL**

This FINANCING STATEMENT and SECURITY AGREEMENT covers all of Debtor's interests in all of the following types or items of property, wherever located and whether now owned or hereafter acquired, and Debtor hereby grants Secured Party a security interest therein as collateral for the payment and performance of all present and future indebtedness, liabilities, guarantees and obligations of Debtor to Secured Party, howsoever arising. Debtor agrees that said security interest may be enforced by Secured Party in accordance with the terms of all security and other agreements between Secured Party and Debtor, the California Uniform Commercial Code, or both, and that this document shall be fully effective as a security agreement, even if there is no other security of other agreement between Secured Party or Debtor:

All assets of the Debtor; all personal property of Debtor;

All "accounts", "general intangibles", "chattel paper", "contract rights", "documents", "instruments", "deposit accounts", "inventory", "farm products", "fixtures" and "equipment", as such terms are defined in Division 9 of the California Uniform Commercial Code in effect on the date hereof;

All general intangibles of every kind, including without limitation, federal, state and local tax refunds and claims of all kinds; all rights as a licensee or any kind; all customer lists, telephone numbers, and purchase orders, and all rights to purchase, lease sell, or otherwise acquire or deal with real or personal property and all rights relating thereto;

All returned and repossessed goods and all rights as a seller of goods; all collateral securing any of the foregoing; all deposit accounts, special and general, whether on deposit with Secured Party or others;

All life and other insurance policies, claims in contract, tort or otherwise, and all judgments now or hereafter arising therefrom;

All right, title and interest of Debtor, and all of Debtor's rights, remedies, security and liens, in, to and in respect of all accounts and other collateral, including, without limitation, rights of stoppage in transit, replevin, repossession and reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, and all guarantees and other contracts of suretyship with respect to any accounts and other collateral, and all deposits and other security for any accounts and other collateral, and all credit and other insurance;

All notes, drafts, letters of credit, contract rights, and things in action; all drawings, specifications, blueprints and catalogs; and all raw materials, work in process, materials used or consumed in Debtor's business, goods, finished goods, returned goods and all other goods and inventory of whatsoever kind or nature, any and all wrapping, packaging, advertising and shipping materials, and all documents relating thereto, and all labels and other devices, names and marks affixed or to be affixed thereto for purposes of selling or identifying the same or the seller or manufacturer thereof;

All inventory wherever located; all present and future claims against any supplier of any of the foregoing, including claims for defective goods or overpayments to or undershipments by suppliers; all proceeds arising from the lease or rental of any of the foregoing; INVENTORY RETURNED BY DEBTOR TO ITS SUPPLIERS SHALL REMAIN SUBJECT TO SECURED PARTY'S SECURITY INTEREST;

All equipment and fixtures, NONE OF WHICH THE DEBTOR IS AUTHORIZED TO SELL, LEASE OR OTHERWISE DISPOSE OF WITHOUT THE WRITTEN CONSENT OF SECURED PARTY, including without limitation all machinery, machine tools, motors, controls, parts, vehicles, workstations, tools, dies, jigs, furniture, furnishings and fixtures; and all attachments, accessories, accessions and property now or hereafter affixed to or used in connection with any of the foregoing, and all substitutions and replacements for any of the foregoing; all warranty and other claims against any vendor or lessor of any of the foregoing;

All investment property;

All books, records, ledger cards, computer data and programs and other property and general intangibles at any time evidencing or relating to any or all of the foregoing; and

All cash and non-cash products and proceeds of any of the foregoing, in whatever form, including proceeds in the form of inventory, equipment or any other form of personal property, including proceeds of proceeds and proceeds of insurance, and all claims by Debtor against third parties for loss or damage to, or destruction of, or otherwise relating to, any or all of the foregoing.

NOTICE - PURSUANT TO AN AGREEMENT BETWEEN DEBTOR AND SECURED PARTY, DEBTOR HAS AGREED NOT TO FURTHER ENCUMBER THE COLLATERAL DESCRIBED HEREIN, THE FURTHER ENCUMBERING OF WHICH MAY CONSTITUTE THE TORTIOUS INTERFERENCE WITH SECURED PARTY'S RIGHTS BY SUCH ENCUMBRANCER. IN THE EVENT THAT ANY ENTITY IS GRANTED A SECURITY INTEREST IN DEBTOR'S ACCOUNTS, CHATTEL PAPER, GENERAL INTANGIBLES OR OTHER ASSETS CONTRARY TO THE ABOVE, THE SECURED PARTY ASSERTS A CLAIM TO ANY PROCEEDS THEREOF RECEIVED BY SUCH ENTITY.

Notwithstanding any of the foregoing, this Financing Statement and Security Agreement does not cover any of Debtor's interests in, and the Collateral shall not under any circumstance include, and no security interest is granted in. Debtor's Intellectual Property, including, without limitation, any and all property of the Debtor that is subject to, listed in or otherwise described in the Negative Pledge Agreement dated March 8, 2005 between the Secured Party and the Debtor. *"Intellectual Property"* means, collectively, all rights, priorities and privileges of the Debtor relating to intellectual property, in any medium, of any kind or nature whatsoever, now or hereafter owned or acquired or received by Debtor, or in which Debtor now holds or hereafter acquires or receives any right or interest, whether arising under United States, multinational or foreign laws or otherwise, and shall include, in any event, all copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, trade secrets, internet domain names (including any right related to the registration thereof), proprietary or confidential information, mask works, sources object or other programming codes, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data base, data, skill, expertise, recipe, experience, process, models, drawings, materials or records. Notwithstanding the foregoing, Intellectual Property as defined above does not include accounts, accounts receivable, royalties, licensing fees, contract rights, proceeds, or other revenue obtained or owed from or on account of the licensing or other exploitation of Intellectual Property, none of which are excluded, and all of which are included as collateral in the security interest granted by Debtor to Secured Party.

**"DEBTOR"**

**ATRICURE, INC.,** a Delaware corporation

By: /s/ David J. Drachman

Name: David J. Drachman

Title: CEO

**"SECURED PARTY"**

**LIGHTHOUSE CAPITAL PARTNERS V, L.P.**
**BY: LIGHTHOUSE MANAGEMENT PARTNERS V, L.L.C.,**
its general partner

By: _____

Name: _____

Title: _____

**EXHIBIT B**

[_____]

**SECURED PROMISSORY NOTE**

This SECURED PROMISSORY NOTE (this "*Note*") is made _____, 200_, by **ATRICURE, INC.** ("*Borrower*") in favor of **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** (collectively with its assigns, "*Lender*"). Initially capitalized terms used and not otherwise defined herein are defined in that certain Loan and Security Agreement No. 4631 between Borrower and Lender dated March 8,2005 (the "*Loan Agreement*").

FOR VALUE RECEIVED, Borrower promises to pay in lawful money of the United States, to the order of Lender, at 500 Drake's Landing Road, Greenbrae, California 94904, or such other place as Lender may from time to time designate ("*Lender's Office*"), the principal sum of $_____ (the "Advance"), including interest on the unpaid balance and all other amounts due or to become due hereunder according to the terms hereof and of the Loan Agreement.

*"Basic Rate"* means a variable *per annum* rate of interest equal to the Index plus the Interest Margin which shall be subject to adjustment as provided herein. On and after the Funding Date the Basic Rate shall be fixed and not subject to any further adjustments.

"*Final Payment*" means 15% of the Advance.

"*Index*" means the prevailing variable Prime Rate of annual interest as quoted from time to time in the western edition of the Wall Street Journal.

"*Interest Margin*" means 1.75% per annum.

"*Loan Commencement Date*" means September 1,2005.

"*Maturity Date*" means the last day of the Repayment Period, or if earlier, the date of prepayment under the Note.

"*Payment Date*" means the first day of each calendar month.

"*Repayment Period*" means the period beginning on the Loan Commencement Date and continuing for 48 calendar months.

**1. Repayment.** Borrower shall pay principal and interest due hereunder from the Funding Date, until this Note is paid in full, on each Payment Date pursuant to the terms of the Loan Agreement and this Note. Prior to the Loan Commencement Date, Borrower shall pay to Lender, monthly in advance on each Payment Date, interest calculated using the Basic Rate prevailing on the first business day of such calendar month. Beginning on the Loan Commencement Date and on each Payment Date thereafter during the Repayment Period, Borrower shall make equal installments of principal and interest in advance, calculated at the Basic Rate. On the Maturity Date, Borrower shall pay, in addition to all unpaid principal and interest outstanding hereunder, the Final Payment.

**2. Interest.** Interest not paid when due will, to the maximum extent permitted under applicable law, become part of principal, at Lender's option, and thereafter bear like interest as principal. Interest shall be computed on the basis of a 360 day year. All Obligations not paid when due shall bear interest at the Default Rate unless waived in writing by Lender. All amounts paid hereunder will be applied to the Obligations in Lender's discretion and as provided in the Loan Agreement.

**3. Voluntary Prepayment.** Borrower may prepay the Note if and only if Borrower pays to Lender (i) the outstanding principal amount of this Note and any unpaid accrued interest (ii) the Final Payment, and (iii) all other sums, if any, that shall have become due and payable hereunder with respect to this Note.

**4. Collateral.** This Note is secured by the Collateral.

**5. Waivers.** Borrower, and all guarantors and endorsers of this Note, regardless of the time, order or place of signing, hereby waive notice, demand, presentment, protest, and notices of every kind, presentment for the purpose of accelerating maturity, diligence in collection, and, to the fullest extent permitted by law, all rights to plead any statute of limitations as a defense to any action on this Note.

**6. Choice of Law; Venue. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF BORROWER AND LENDER HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA. BORROWER AND LENDER EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

**7. Miscellaneous.** THIS NOTE MAY BE MODIFIED ONLY BY A WRITING SIGNED BY BORROWER AND LENDER. Each provision here of is severable from every other provision hereof and of the Loan Agreement when determining its legal enforceability. Sections and subsections are titled for convenience, and not for construction. “Hereof,” “herein,” “hereunder,” and similar words refer to this Note in its entirety. “Or” is not necessarily exclusive. “Including” is not limiting. The terms and conditions hereof inure to the benefit of and are binding upon the parties’ respective permitted successors and assigns. This Note is subject to all the terms and conditions of the Loan Agreement.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed by a duly authorized officer as of the day and year first above written.

**ATRICURE, INC.**

By: _____

Name: _____

Title: _____

**EXHIBIT C**

**WARRANTS**

NEITHER THIS WARRANT NOR THE COMMON STOCK TO BE ISSUED UPON EXERCISE HEREOF HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*1933 ACT*"), OR QUALIFIED OR REGISTERED UNDER CALIFORNIA OR ANY OTHER APPLICABLE STATE SECURITIES LAWS, AND NEITHER THIS WARRANT NOR SUCH COMMON STOCK MAY BE SOLD OR TRANSFERRED UNLESS SUCH SALE OR TRANSFER IS IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE 1933 ACT AND APPLICABLE STATE SECURITIES LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER THE 1933 ACT AND THAT APPLICABLE STATE SECURITIES LAWS HAVE BEEN COMPLIED WITH.

# COMMON STOCK PURCHASE WARRANT

Warrant No. _____ Number of Shares: 209,790

**ATRICURE, INC.**

Effective as of March 8, 2005

Void after March 8, 2012

**1. Issuance.** This Common Stock Purchase Warrant (the "*Warrant*") is issued to **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** by **ATRICURE**, INC., a Delaware corporation (hereinafter with its successors called the "*Company*").

**2. Purchase Price; Number of Shares.** The registered holder of this Warrant (the "*Holder*"), commencing on the date hereof, is entitled upon surrender of this Warrant with the subscription form annexed hereto duly executed, at the principal office of the Company, to purchase from the Company at a price per share of $2.97 (the "*Purchase Price*"), 209,790 fully paid and nonassessable shares of Common Stock, $0.0001 par value, of the Company (the "*Common Stock*").

Until such time as this Warrant is exercised in full or expires, the Purchase Price and the securities issuable upon exercise of this Warrant are subject to adjustment as hereinafter provided. The person or persons in whose name or names any certificate representing shares of Common Stock is issued hereunder shall be deemed to have become the holder of record of the shares represented thereby as at the close of business on the date this Warrant is exercised with respect to such shares, whether or not the transfer books of the Company shall be closed.

**3. Payment of Purchase Price.** The Purchase Price may be paid (a) in cash or by check, (b) by the surrender by the Holder to the Company of any promissory notes or other obligations issued by the Company, with all such notes and obligations so surrendered being credited against the Purchase Price in an amount equal to the principal amount thereof plus accrued interest to the date of surrender, or (c) by any combination of the foregoing.

**4. Net Issue Election.** The Holder may elect to receive, without the payment by the Holder of any additional consideration, shares of Common Stock equal to the value of this Warrant or any portion hereof by the surrender of this Warrant or such portion to the Company, with the net issue election notice annexed hereto duly executed, at the principal office of the Company. Thereupon, the Company shall issue to the Holder such number of fully paid and nonassessable shares of Common Stock as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

where: X = the number of shares of Common Stock to be issued to the Holder pursuant to this **Section 4.**

Y = the number of shares of Common Stock covered by this Warrant in respect of which the net issue election is made pursuant to this **Section 4.**

A = the Fair Market Value (defined below) of one share of Common Stock as determined at the time the net issue election is made pursuant to this **Section 4.**

B = the Purchase Price in effect under this Warrant at the time the net issue election is made pursuant to this **Section 4.**

"Fair Market Value" of a share of Common Stock as of the date that the net issue election is made (the "*Determination Date*") shall mean:

**(i)** If the net issue election is made in connection with and contingent upon the closing of the sale of the Company's Common Stock to the public in a public offering pursuant to a Registration Statement under the 1933 Act (a "*Public Offering*"), and if the Company's Registration Statement relating to such Public Offering ("*Registration Statement*") has been declared effective by the Securities and Exchange Commission, then the initial "Price to Public" specified in the final prospectus with respect to such offering.

**(ii)** If the net issue election is not made in connection with and contingent upon a Public Offering, then as follows:

**(a)** If traded on a securities exchange or the Nasdaq National Market, the fair market value of the Common Stock shall be deemed to be the average of the closing or last reported sale prices of the Common Stock on such exchange or market over the five day period ending five trading days prior to the Determination Date;

**(b)** If otherwise traded in an over-the-counter market, the fair market value of the Common Stock shall be deemed to be the average of the closing ask prices of the Common Stock over the five day period ending five trading days prior to the Determination Date; and

**(c)** If there is no public market for the Common Stock, then fair market value shall be determined in good faith by the Company's Board of Directors.

**5. Partial Exercise.** This Warrant may be exercised in part, and the Holder shall be entitled to receive a new warrant, which shall be dated as of the date of this Warrant, covering the number of shares in respect of which this Warrant shall not have been exercised.

**6. Fractional Shares.** In no event shall any fractional share of Common Stock be issued upon any exercise of this Warrant. If, upon exercise of this Warrant in its entirety, the Holder would, except as provided in this **Section 6**, be entitled to receive a fractional share of Common Stock, then the Company shall issue the next higher number of full shares of Common Stock, issuing a full share with respect to such fractional share.

**7. Expiration Date; Automatic Exercise.** This Warrant shall expire upon the earlier of (i) the close of business on March 8, 2012, or (ii) the close of business on the date that is one year after the date of the consummation of an initial public offering by the Company of its Common Stock to the public generally pursuant to a registration statement in an underwritten offering, and shall be void thereafter. Notwithstanding the foregoing, this Warrant shall automatically be deemed to be exercised in full pursuant to the provisions of **Section 4** hereof, without any further action on behalf of the Holder, immediately prior to the time this Warrant would otherwise expire pursuant to the preceding sentence if the Fair Market Value of one share of the Common Stock is greater than the Purchase Price.

**8. Reserved Shares; Valid Issuance.** The Company covenants that it will at all times from and after the date hereof reserve and keep available such number of its authorized shares of Common Stock, free from all preemptive or similar rights therein, as will be sufficient to permit the exercise of this Warrant in full. The Company further

covenants that such shares as may be issued pursuant to such exercise will, upon issuance, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof.

**9. Stock Splits and Dividends.** If after the date hereof the Company shall subdivide the Common Stock, by split-up or otherwise, or combine the Common Stock, or issue additional shares of Common Stock in payment of a stock dividend on the Common Stock, the number of shares of Common Stock issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination, and the Purchase Price shall forthwith be proportionately decreased in the case of a subdivision or stock dividend, or proportionately increased in the case of a combination.

**10. Additional Rights.** The other rights applicable to the Common Stock of the Company are set forth in the Amended and Restated Certificate of Incorporation, as amended from time to time (the "*Articles*"), a true and complete copy in its current form which is attached hereto as ***Exhibit A.*** Such rights shall not be restated, amended or modified in any manner which affects the Holder differently than the holders of Common Stock without such Holder's prior written consent. The Company shall promptly provide the Holder hereof with any restatement, amendment or modification to the Articles promptly after the same has been made.

**11. Mergers and Reclassifications.** If after the date hereof the Company shall enter into any Reorganization (as hereinafter defined), then, as a condition of such Reorganization, lawful provisions shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder, so that the Holder shall thereafter have the right to purchase, at a total price not to exceed that payable upon the exercise of this Warrant in full, the kind and amount of shares of stock and other securities and property receivable upon such Reorganization by a holder of the number of shares of Common Stock which might have been purchased by the Holder immediately prior to such Reorganization, and in any such case appropriate provisions shall be made with respect to the rights and interest of the Holder to the end that the provisions hereof (including without limitation, provisions for the adjustment of the Purchase Price and the number of shares issuable hereunder and the provisions relating to the net issue election) shall thereafter be applicable in relation to any shares of stock or other securities and property thereafter deliverable upon exercise hereof. For the purposes of this **Section 11,** the term "*Reorganization*" shall include without limitation any reclassification, capital reorganization or change of the Common Stock (other than as a result of a subdivision, combination or stock dividend provided for in **Section 9** hereof), or any consolidation of the Company with, or merger of the Company into, another corporation or other business organization (other than a merger in which the Company is the surviving corporation and which does not result in any reclassification or change of the outstanding Common Stock), or any sale or conveyance to another corporation or other business organization of all or substantially all of the assets of the Company.

**12. Certificate of Adjustment.** Whenever the Purchase Price is adjusted, as herein provided, the Company shall promptly deliver to the Holder a certificate of the Company's chief financial officer setting forth the Purchase Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

**13. Notices of Record Date, Etc.** In the event of:

**(a)** any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase, sell or otherwise acquire or dispose of any shares of stock of any class or any other securities or property, or to receive any other right;

**(b)** any reclassification of the capital stock of the Company, capital reorganization of the Company, consolidation or merger involving the Company, or sale or conveyance of all or substantially all of its assets;

**(c)** any voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then in each such event the Company will provide or cause to be provided to the Holder a written notice thereof. Such notice shall be provided at least twenty (20) business days prior to the date specified in such notice on which any such action is to be taken.

**14. Representations, Warranties and Covenants.** This Warrant is issued and delivered by the Company and accepted by each Holder on the basis of the following representations, warranties and covenants made by the Company:

**(a)** The Company has all necessary authority to issue, execute and deliver this Warrant and to perform its obligations hereunder. This Warrant has been duly authorized issued, executed and delivered by the Company and is the valid and binding obligation of the Company, enforceable in accordance with its terms.

**(b)** The shares of Common Stock issuable upon the exercise of this Warrant have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable.

**(c)** The issuance, execution and delivery of this Warrant do not, and the issuance of the shares of Common Stock upon the exercise of this Warrant in accordance with the terms hereof will not, (i) violate or contravene the Company's Articles or by-laws, or any law, statute, regulation, rule, judgment or order applicable to the Company, (ii) violate, contravene or result in a breach or default under any contract, agreement or instrument to which the Company is a party or by which the Company or any of its assets are bound or (iii) require the consent or approval of or the filing of any notice or registration with any person or entity.

**(d)** As long as this Warrant is, or any shares of Common Stock issued upon exercise of this Warrant are, issued and outstanding, the Company will provide to the Holder the financial and other information required to be provided to the Holder in accordance with Section 6.2 of that certain Loan and Security Agreement No. 4631 between the Company and Lighthouse Capital Partners V, L.P. dated as of March 8, 2005, *provided, however,* that the Holder's information rights will be available with respect to any shares of Common Stock issued upon exercise of this Warrant only (A) if and so long as they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction or (B) prior to the date such securities have been sold in a transaction exempt from the prospectus delivery requirements of the Securities Act so that all transfer restrictions and legends with respect thereto are removed upon consummation of such sale.

**(e)** So long as this Warrant has not terminated, Holder shall be entitled to receive such financial and other information as the Holder would be entitled to receive under the Company's Series B Convertible Preferred Stock Purchase Agreement dated as of June 6, 2002, if Holder were a holder of that number of shares issuable upon full exercise of this Warrant.

**(f)** As of the date hereof, the authorized capital stock of the Company consists of (i) 40,000,000 shares of Common Stock, of which 7,155,141 shares are issued and outstanding and 192,307 shares are reserved for issuance upon the exercise of this Warrant, (ii) 8,293,679 shares of Series A Preferred Stock, of which 8,293,579 are issued and outstanding shares, and (iii) 15,426,936 shares of Series B Preferred Stock, of which 14,552,097 are issued and outstanding shares. Attached hereto as ***Exhibit B*** is a capitalization table summarizing the capitalization of the Company. Once per calendar quarter, the Company will provide Holder with a current capitalization table indicating changes, if any, to the number of outstanding shares of common stock and preferred stock.

**15. Registration Rights.** The Company grants to the Holder all the rights of a "Holder" and an "Investor" (but not a "Major Investor") under the Company's Amended and Restated Investors' Rights Agreement dated as of June 6, 2002 (the "*Rights Agreement*"), including, without limitation, the registration rights contained therein, and agrees to amend the Rights Agreement so that (i) the shares of Common Stock issuable upon exercise of this Warrant shall be "*Registrable Securities*," and (ii) the Holder shall be a "Holder" and an "Investor" (but not a "Major Investor") for all purposes of such Rights Agreement. The Holder agrees to execute and become subject to such Rights Agreement,

including, without limitation, the Market Stand-Off Agreement contained therein, with respect to any of the Common Stock purchasable pursuant to the terms of this Warrant.

**16. Amendment.** The terms of this Warrant may be amended, modified or waived only with the written consent of the Holder.

**17. Representations and Covenants of the Holder.** This Common Stock Purchase Warrant has been entered into by the Company in reliance upon the following representations and covenants of the Holder, which by its execution hereof the Holder hereby confirms:

**(a) Investment Purpose.** The right to acquire Common Stock contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

**(b) Accredited Investor.** Holder is an "accredited investor" within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

**(c) Private Issue.** The Holder understands (i) that the Common Stock issuable upon exercise of the Holder's rights contained herein is not registered under the 1933 Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this **Section 17.**

**(d) Financial Risk.** The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

**18. Notices, Transfers, Etc.**

**(a)** Any notice or written communication required or permitted to be given to the Holder may be given by certified mail or delivered to the Holder at the address most recently provided by the Holder to the Company.

**(b)** Subject to compliance with applicable federal and state securities laws, this Warrant may be transferred by the Holder with respect to any or all of the shares purchasable hereunder. Upon surrender of this Warrant to the Company, together with the assignment notice annexed hereto duly executed, for transfer of this Warrant as an entirety by the Holder, the Company shall issue a new warrant of the same denomination to the assignee. Upon surrender of this Warrant to the Company, together with the assignment hereof properly endorsed, by the Holder for transfer with respect to a portion of the shares of Common Stock purchasable hereunder, the Company shall issue a new warrant to the assignee, in such denomination as shall be requested by the Holder hereof, and shall issue to such Holder a new warrant covering the number of shares in respect of which this Warrant shall not have been transferred. Any transferee shall be subject to the same restrictions on transfer with respect to this Warrant as the Holder.

**(c)** In case this Warrant shall be mutilated, lost, stolen or destroyed, the Company shall issue a new warrant of like tenor and denomination and deliver the same (i) in exchange and substitution for and upon surrender and cancellation of any mutilated Warrant, or (ii) in lieu of any Warrant lost, stolen or destroyed, upon receipt of an affidavit of the Holder or other evidence reasonably satisfactory to the Company of the loss, theft or destruction of such Warrant.

**(d)** If required by the Company, in connection with each exercise and issuance of shares of Common Stock purchasable hereunder or in the connection with the transfer by the Holder to any transferee of this Warrant or any of the shares of Common Stock purchasable hereunder, the Holder or such transferee, as the case may be, will give (i) with respect to any exercise and issuance of shares of Common Stock, assurances in writing that the representations and covenants set forth in **Section 17** above remain true and are confirmed as of the date of such

exercise, and (ii) with respect to any transfer of this Warrant or any of the shares of Common Stock purchasable hereunder, assurances in writing that the representations and covenants set forth in **Section 17** above are true with respect to such transferee and are confirmed and acknowledged by such transferee.

**19. No Impairment.** The Company will not, by amendment of its Articles or through any reclassification, capital reorganization, consolidation, merger, sale or conveyance of assets, dissolution, liquidation, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance of performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder.

**20. Governing Law.** The provisions and terms of this Warrant shall be governed by and construed in accordance with the internal laws of the State of Delaware.

**21. Successors and Assigns.** This Warrant shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Holder's successors, legal representatives and permitted assigns.

**22. Business Days.** If the last or appointed day for the taking of any action required of the expiration of any rights granted herein shall be a Saturday or Sunday or a legal holiday in California, then such action may be taken or right may be exercised on the next succeeding day which is not a Saturday or Sunday or such a legal holiday.

**23. Value.** The Company and the Holder agree that the value of this Warrant on the date of grant is $100.

**24. No Shareholder Rights Until Exercise.** No Holder hereof, solely by virtue of this Warrant, shall be entitled to any rights as a shareholder of the Company. Holder shall have all rights of a shareholder with respect to securities purchased upon exercise hereof as of the next succeeding day on which the transfer books of the Company are open after the date on which a subscription form for such exercise, accompanied by appropriate payment of the Purchase Price or an appropriate Net Issue Election Notice, as the case may be, is received by the Company.

**ATRICURE, INC.**

By: /s/ David J. Drachman

Name: David J. Drachman

Title: CEO

**Subscription**

To: _____ Date: _____

The undersigned hereby subscribes for _____ shares of Common Stock covered by this Warrant. The certificate(s) for such shares shall be issued in the name of the undersigned or as otherwise indicated below:

_____
Signature

_____
Name for Registration

_____
Mailing Address

**Net Issue Election Notice**

To: _____ Date: _____

The undersigned hereby elects under **Section 4** to surrender the right to purchase _____ shares of Common Stock pursuant to this Warrant. The certificate(s) for such shares issuable upon such net issue election shall be issued in the name of the undersigned or as otherwise indicated below:

_____
Signature

_____
Name for Registration

_____
Mailing Address

**Assignment**

For value received _____ hereby sells, assigns and transfers unto _____ _____ [Please print or typewrite name and address of Assignee]

the within Warrant, and does hereby irrevocably constitute and appoint _____ its attorney to transfer the within Warrant on the books of the within named Company with full power of substitution on the premises.

Dated: _____

In the Presence of:

_____

**EXHIBIT A**

**Amended and Restated Certificate of Incorporation**

**See attached pages.**

*STATE OF DELAWARE*
*SECRETARY OF STATE*
*DIVISION OF CORPORATIONS*
*FILED 10:00 AM 06/06/2002*
*020362819 – 3304415*

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ATRICURE, INC.

AtriCure, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation") DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of the Corporation, resolutions were duly adopted proposing and declaring advisable that the Certificate of Incorporation of the Corporation be amended and that such amendment be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED: That the Board of Directors of the Corporation recommends and deems it advisable that the Certificate of Incorporation of the Corporation be amended by deleting Article IV thereof and substituting for said Article IV the new Article IV set forth on Exhibit A attached hereto; and

RESOLVED: That the aforesaid proposed amendment be submitted to the stockholders of the Corporation for their consideration; and

RESOLVED: That following the approval by the stockholders of the aforesaid amendment (the "Amendment") as required by law, the officers of the Corporation be, and they hereby are, and each of them hereby is, authorized and directed (i) to prepare, execute and file with the Secretary of State of the State of Delaware a Certificate of Amendment setting forth the Amendment in the form approved by the stockholders and (ii) to take any and all other actions necessary, desirable or convenient to give effect to the Amendment or otherwise to carry out the purposes of the foregoing Resolutions.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the Amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware, and written notice of the adoption of the Amendment has been given as provided in section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

THIRD: That the Amendment was duly adopted in accordance with the applicable provisions of sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, AtriCure, Inc. has caused this certificate to be signed by its President this 5th day of June 2002.

ATRICURE, INC.

By: /s/ Michael D. Hooven

Name: Michael D. Hooven
Title: President

EXHIBIT A

IV.

The total number of shares of all classes of stock which the Corporation has authority to issue is 63,720,615 shares, consisting of (i) 40,000,000 shares of Common Stock, par value $.0001 per share (the "Common Stock"), and (ii) 23,720,615 shares of Preferred Stock, par value $.0001 per share (the "Preferred Stock"), of which 8,293,679 shares are designated as Series A Convertible Preferred Stock (the "Series A Preferred Stock") and 15,426,936 shares are designated as Series B Convertible Preferred Stock (the "Series B Preferred Stock").

Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the sum of the number of shares of Common Stock then outstanding and the number of shares of Common Stock to be reserved pursuant to Subsection 2(1) below) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if converted basis).

The powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect of each class or series of stock of the Corporation shall be as follows:

Section 1. Liquidation Rights.

(a) Liquidation Payments.

(i) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary (a **"Liquidation Event"**), before any distribution or payment shall be made to the holders of any other stock of the Corporation, (a) the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $0.63 per share of Series A Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series A Preferred Stock; such price per share, the "Original Series A Per Share Price"), plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series A Preferred Stock with respect to such liquidation, dissolution or winding up, and (b) the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock an amount equal to $1.43 per share of Series B Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification or other similar event with respect to the Series B Preferred Stock; such price per share, the "Original Series B Per Share Price") plus all dividends accrued or declared thereon but unpaid (if any), to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such liquidation, dissolution or winding up.

If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock and Series B Preferred Stock of all amounts

distributable to them under this Subsection l(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Subsection l(a)(i).

No payment shall be made with respect to the Common Stock unless and until full payment has been made to the holders of the Preferred Stock of the amounts that they are entitled to receive under this Subsection l(a)(i).

(ii) After the payments described in Subsection l(a)(i) shall have been made in full to the holders of the Preferred Stock, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock, the remaining assets available for distribution shall be distributed among the holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock ratably in proportion to the number of shares of Common Stock then held by them or issuable to them upon conversion of the Series A Preferred Stock or Series B Preferred Stock then held by them. Such ratable distribution of the remaining assets shall continue until such time as (x) the holders of the Series A Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $1.89 per share (in the case of the cessation of participation of the holders of Series A Preferred Stock) and (y) the holders of the Series B Preferred Stock have received aggregate distributions under Subsections l(a)(i) and l(a)(ii) equal to $4.29 per share (in the case of the cessation of participation of the holders of Series B Preferred Stock). After such time as the holders of the Series A Preferred Stock and the Series B Preferred Stock have received distributions totaling $1.89 per share and $4.29 per share, respectively, all remaining assets shall be distributed ratably exclusively to the holders of the Common Stock (and not to any holders of Preferred Stock).

(iii) Upon conversion of shares of Preferred Stock into shares of Common Stock pursuant to Section 2 below, the holders of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(iv) The amounts payable with respect to shares of Preferred Stock under this Subsection l(a) are sometimes hereinafter referred to as “Liquidation Payments.”

(v) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder’s shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(b) Distributions Other than Cash. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distributions shall be the fair market value of such property as determined in good faith by the Board of Directors of the Corporation. The Corporation shall give prompt written notice of such valuation to each holder of Preferred Stock. Any securities shall be valued as follows:

(i) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the distribution;

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

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors; and

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be made with an appropriate discount from the market value determined as above to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(c) Merger as Liquidation, etc. The merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) in voting power of the capital stock of the surviving corporation, in which case the provisions of Subsection 2(h) shall apply), the closing of any transaction, or series of transactions, in which more than fifty percent (50%) of the voting power of the Corporation is sold to another corporation or entity or the sale of all, or substantially all, of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation for purposes of this Section 1, unless the holders of (i) at least sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock; and (ii) at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, each such series voting as separate classes, elect to the contrary, such election to be made by giving written notice thereof to the Corporation at least five (5) days before the effective date of such event. If such notice is given with respect to the Series A Preferred Stock and Series B Preferred Stock, the provisions of Subsection 2(h) shall apply to such Preferred Stock. Unless such election is made by the requisite holders of a series of Preferred Stock, any amounts received by the holders of such series of Preferred Stock as a result of such merger or consolidation shall be deemed to be applied toward, and all consideration received by the Corporation in such asset sale together with all other available assets of the Corporation shall be distributed toward, the Liquidation Payments in the order of preference set forth in Subsection l(a).

(d) Notice. Notice of any proposed liquidation , dissolution or winding up of the affairs of the Corporation (including any merger, consolidation, sale of capital stock or sale of

assets which may be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation under Subsection l(c)), stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given to the holders of record of Preferred Stock not less than thirty (30) days prior to the payment date stated therein. Any holder of outstanding shares of Preferred Stock may waive notice required by this Subsection by a written document specifically indicating such waiver.

Section 2. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert; Conversion Price. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the principal executive office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price by the Conversion Price for such series, determined as hereinafter provided, in effect at the time of conversion. The "Issuance Price" shall be $0.63 per share for the Series A Preferred Stock and $1.43 per share for the Series B Preferred Stock. The conversion price at which shares of Common Stock shall be deliverable upon conversion of Preferred Stock without the payment of any additional consideration by the holder thereof (the "Conversion Price") shall initially be $0.63 per share of Common Stock for the Series A Preferred Stock and $1.43 per share of Common Stock for the Series B Preferred Stock subject, in each case, to adjustment in order to adjust the number of shares of Common Stock into which the Preferred Stock is convertible, as hereinafter provided. All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for such series of Preferred Stock, upon the closing of a firm commitment underwritten public offering (a "Qualified Public Offering") pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Act"), covering the offer and sale of Common Stock for the account of the Corporation to the public at an offering price per share (prior to underwriter commissions and discounts) of not less than $4.29 (as adjusted to reflect any stock dividends, distributions, combinations, reclassifications or other like transactions effected by the Corporation in respect of its Common Stock) and with proceeds (after deduction of underwriters' commissions and expenses) to the Corporation of not less than $30,000,000.00 (in the event of which Qualified Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted the Preferred Stock until the closing of such Qualified Public Offering). Notwithstanding the foregoing, a registration relating solely to a transaction under Rule 145 under the Act (or any successor thereto) or to an employee benefit plan of the Corporation shall not be deemed to be a Qualified Public Offering causing the automatic conversion of the Preferred Stock into shares of Common Stock.

(ii) With respect to the Series A Preferred Stock, each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series A Preferred Stock, upon the written election of the holders of not less than sixty percent (60%) of the then issued and outstanding shares of Series A Preferred Stock, voting as a separate class. With respect to the Series B Preferred Stock, each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock, based on the Conversion Price then in effect for the Series B Preferred Stock, upon the written election of the holders of not less than fifty percent (50%) of the then issued and outstanding shares of Series B Preferred Stock, voting as a separate class.

(c) Mechanics of Automatic Conversions. Upon the occurrence of either of the events specified in Subsection 2(b), the outstanding shares of the applicable series of Preferred Stock shall be converted automatically without any further action by the holders of shares of such series and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, that all holders of shares of Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Subsection 2(b) triggering such conversion, including the date such event occurred (the "Automatic Conversion Date"), and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. On the Automatic Conversion Date, all rights with respect to the series of Preferred Stock so converted, shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such series of Preferred Stock has been converted, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of any Preferred Stock, the holders of such series of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, promptly at such office and in the holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock so surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. No fractional share of Common Stock shall be issued upon automatic conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock on the Automatic Conversion Date, as determined in good faith by the Corporation's Board of Directors.

(d) Mechanics of Optional Conversions. Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock pursuant to Subsection 2(a), the holder shall surrender the certificate or certificates therefor at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Preferred Stock so converted, shall terminate, except any of the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted and cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock being converted to and including the time of conversion. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. No fractional share of Common Stock shall be issued upon optional conversion of any Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then current fair market value of one share of Common Stock, as determined in good faith by the Corporation's Board of Directors. The Corporation shall, as soon as practicable (but in no event later than five (5) business days) after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(i) If the conversion is in connection with an underwritten offering of securities pursuant to the Act the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) If the conversion is in connection with a liquidation described in Subsection l(c) above, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the consummation of the liquidation, in which event the person(s) entitled to receive the Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the consummation of the liquidation.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection 2(e), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean the first date on which a share of Series B Preferred Stock was issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 2(e)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) all shares of Common Stock issuable upon conversion of, or as a dividend upon, shares of Preferred Stock;

(B) 4,500,000 shares of Common Stock reserved in connection with Options issued or to be issued under the Corporation's 2001 Stock Option Plan, as amended or restated, to officers, directors, employees, advisors or consultants of the Corporation, which number of reserved shares may be increased by the approval of at least a majority of the Corporation's Board of Directors (provided that such majority includes all directors elected exclusively by the holders of Preferred Stock in accordance with Section 5(b)(i) and 5(b)(ii) (the "Preferred Directors")); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(C) all shares of Common Stock issued or issuable to financial institutions, equipment lessors or other commercial lenders in connection with commercial credit agreements, equipment financings or other similar financings, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock;

(D) all shares of Common Stock issued or issuable pursuant to agreements to license technology and/or provide sponsored research, which are approved by at least a majority of the Corporation's Board of Directors (provided that such majority includes all Preferred Directors); notwithstanding the foregoing, any shares of Common Stock issued or deemed to be issued primarily for equity financing purposes shall be Additional Shares of Common Stock; and

(E) for which adjustment to the Conversion Price for such series of Preferred Stock is made pursuant to Subsection 2(e)(vi).

(ii) No Adjustment of Conversion Price. Except as set forth in Subsection 2(e)(vi), no adjustment in the number of shares of Common Stock into which each share of Preferred Stock is convertible shall be made, by adjustment of the Conversion Price for such series of Preferred Stock, in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock (determined pursuant to Subsection 2(e)(v)) issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be readjusted to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any decrease in the consideration payable to the Corporation, or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be

readjusted to reflect such decrease or increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(D) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price as adjusted upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be readjusted as if:

(I) in the case of Convertible Securities or Options for Common Stock the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Subsection 2(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(E) no readjustment pursuant to this Section 2(e) shall have the effect of increasing the applicable Conversion Price for a series of Preferred Stock; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued with respect to the Preferred Stock:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution; or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Subsection 2(e)(iii) as of the time of actual payment of such dividend or distribution.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(l) but excluding Additional Shares of Common Stock deemed to be issued pursuant to Subsection 2(e)(iii)(2), which event is dealt with in Subsection 2(e)(vi)(l)), without consideration or for a consideration per share less than the Conversion Price for Series A Preferred Stock or Series B Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the then-existing Conversion Price for such affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price determined in accordance with the following formula:

$$NCP = \frac{P_1Q_1 + AC}{Q_1 + Q_2}$$

where:

| | | |
|---|---|---|
| NCP | = | New Conversion Price. |
| $P_1$ | = | Conversion Price in effect immediately prior to new issue. |
| $Q_1$ | = | Number of shares of Common Stock outstanding, or deemed to be outstanding as set forth below, immediately prior to such issue. |
| AC | = | The aggregate consideration received by the Corporation for the shares of Common Stock issued, or deemed to have been issued, in the subject transaction. |
| $Q_2$ | = | Number of shares of Common Stock issued, or deemed to have been issued, in the subject transaction. |

provided, that for the purpose of this Subsection 2(e)(iv), all shares of Common Stock issuable upon conversion of shares of Preferred Stock outstanding immediately prior to such issue shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to Subsection 2(e)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this Subsection 2(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Corporation's Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Corporation's Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 2(e)(iii)(1), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event the Corporation shall be deemed to issue Additional Shares of Common Stock pursuant to Subsection 2(e)(iii)(2) in a stock dividend, stock distribution or subdivision, the Conversion

Price in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such deemed issuance, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in assets or in securities of the Corporation other than shares of Common Stock, and other than as otherwise adjusted in this Section 2, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of assets or securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such assets or securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(g) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a merger, consolidation, or sale of assets provided for below), then and in each such event the holder of Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by the holder of a number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets (other than a consolidation, merger or sale which is treated as a liquidation with respect to the Preferred Stock pursuant to Subsection 1(c)), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Corporation’s Board of Directors) shall be made in the application of the provisions set forth in this Section 2 with respect to the rights and interest thereafter of the holders of such Preferred Stock, to the end

that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such Preferred Stock.

(i) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and mail to each affected holder of Preferred Stock, by first class mail, postage prepaid, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The certificate shall set forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of Preferred Stock affected.

(k) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock:

(A) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (i) and (ii) above; and

(B) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(l) Common Stock Reserved. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting

the conversion of the shares of Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(m) Certain Taxes. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock.

(n) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(o) Good Faith. If any event occurs as to which in the reasonable opinion of the Board of Directors of the Corporation, in good faith, the other provisions of this Section 2 are not strictly applicable but the lack of any adjustment in the Conversion Price would not in the reasonable opinion of the Board fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, or if strictly applicable would not fairly protect the Conversion Rights of the holders of such Preferred Stock in accordance with the basic intent and principles of such provisions, then the Board of Directors of the Corporation shall cause the Corporation forthwith to make such adjustment, if any, to the Conversion Price, on a basis consistent with the basic intent and principles of this Section 2, as it in good faith considers necessary to preserve, without dilution, the Conversion Rights of all the holders of such Preferred Stock.

Section 3. Redemption Event.

(a) Upon request in writing to the Corporation by either (y) the holders of at least 66 2/3% in interest of the then issued and outstanding shares of Series A Preferred Stock, making a request as a separate class or (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, making a request as a separate class (the holders of such requesting series of Preferred Stock, the "Requesting Holders," and such request, an "Initial Redemption Request"), the Requesting Holders may cause the Corporation, on June 6, 2007 and on each of the first and second anniversaries thereof (each such date being referred to hereinafter as a "Redemption Date"), to redeem from all holders of such series of Preferred Stock, at the Original Series A Per Share Price or the Original Series B Per Share Price, as applicable, plus (i) any dividends declared or accrued but unpaid thereon, if any, and (ii) (x) if Series A Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series A Per Share Price from the date of May 25, 2001 through and until the applicable Redemption Date or (y) if Series B Preferred Stock, an amount equal to fifteen percent (15%) *per annum* (by simple interest calculation) of the Original Series B

Per Share Price from the date of June 6, 2002 through and until the applicable Redemption Date (the redemption price for the Series A Preferred Stock or Series B Preferred Stock, as applicable, the "Redemption Price"), the following respective portions of the number of issued and outstanding shares of Preferred Stock held by all holders of such series of Preferred Stock on the applicable Redemption Date:

| Redemption Date | Portion of Shares of Preferred Stock To Be Redeemed |
|---|---|
| June 6, 2007 | 33 1/3% |
| June 6, 2008 | 66 2/3% |
| June 6, 2009 | 100% |

(b) If any of the outstanding shares of a particular series of Preferred Stock are redeemed by the Corporation pursuant to Subsection 3(a) above, then all outstanding shares of such series of Preferred Stock must be redeemed by the Corporation in accordance with Subsection 3(a). However, if the funds of the Corporation legally available for redemption of Preferred Stock on any Redemption Date are insufficient to redeem the entire number of shares of Preferred Stock required under this Section 3 to be redeemed on such date, then those funds which are legally available will be used to redeem the maximum possible number of such shares of Preferred Stock ratably on the basis of the number of shares of Preferred Stock which would be redeemed on such date if the funds of the Corporation legally available therefor had been sufficient to redeem the entire number of shares of Preferred Stock required to be redeemed on such date. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence. The portion of the Redemption Price due but unpaid on any Redemption Date shall accrue interest at the rate of fifteen percent (15%) per annum until paid, and any payments by the Corporation shall be applied first to such interest and then to reducing the amount of the unpaid Redemption Price.

(c) The Corporation shall provide notice of its receipt of an Initial Redemption Request, specifying the time, manner and place of redemption and the Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address for such holder as last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than thirty (30) days prior to the applicable Redemption Date. All holders of record of the series of Preferred Stock that did not make such Initial Redemption Request may nonetheless elect to become, together with the initial Requesting Holders, the "Requesting Holders" on such Redemption Date if written notice(s) is mailed to the Corporation, by first class or registered mail, postage prepaid, at least ten (10) days prior to applicable Redemption Date, which notice(s) includes the requisite percent of the then issued and outstanding shares of such series of Preferred Stock necessary to make an Initial Redemption Request pursuant to Subsection 3(a) above.

(d) Upon receipt by the Corporation of an Initial Redemption Request, the Corporation will become obligated to redeem on the applicable Redemption Date all then

outstanding shares of the applicable series of Preferred Stock in accordance with Subsection 3(a) (other than the shares of such series of Preferred Stock as are duly converted pursuant to Section 2 hereof prior to the close of business on the fifth (5th) full day preceding the Redemption Date). Except as provided in Subsection 3(b) above, each Requesting Holder shall surrender to the Corporation on the applicable Redemption Date the certificate(s) representing the shares to be redeemed on such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Redemption Price shall be paid to the order of each such Requesting Holder and each certificate surrendered for redemption shall be canceled. In the case less than all Preferred Stock represented by any certificate is redeemed in any redemption pursuant to this Section 3, a new certificate will be issued representing the unredeemed Preferred Stock without cost to the holder thereof.

(e) Until a share of Preferred Stock is actually redeemed, each such share shall be entitled to any dividends declared upon such series of Preferred Stock and, until a share of Preferred Stock is actually redeemed, all rights of the holder of such share as a stockholder of the Corporation by reason of the ownership of such share (including, without limitation, voting rights and conversion rights) will continue in full force and effect.

Section 4. Restrictions.

(a) At any time when at least 1,000,000 shares of Preferred Stock are outstanding, except where the vote of the holders of a greater number of shares of Series A Preferred Stock and/or Series B Preferred Stock is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or by this Certificate of Incorporation, without the affirmative vote or written consent of both: (y) the holders of at least a majority in interest of the then issued and outstanding shares of Series A Preferred Stock; and (z) the holders of at least a majority in interest of the then issued and outstanding shares of Series B Preferred Stock, voting as separate classes, the Corporation will not:

(i) amend, alter or change the designation of any preferences, voting or other powers, qualifications, or special or relative rights or privileges of any series of Preferred Stock that adversely affects such Preferred Stock or the holders thereof;

(ii) increase or decrease (other than pursuant to a redemption or conversion contemplated by this Certificate of Incorporation) the authorized number of shares of any series of Preferred Stock;

(iii) create, authorize or issue any class or series of stock having any preference or priority over or being on a parity with any such preference or priority of any series of Preferred Stock or any security convertible into or exchangeable or exercisable for any such class a series of stock;

(iv) effect any license of the Corporation’s technology, other than in the ordinary course of business, in such a manner as to have the same economic effect as the sale of all or substantially all of the properties or assets of the Corporation;

(v) effect any liquidation, dissolution or winding up of the Corporation;

(vi) effect any sale, lease, assignment, transfer or other conveyance (other than the grant of a mortgage or security interest in connection with indebtedness for borrowed money) of all or substantially all of the properties or assets of the Corporation;

(vii) effect any amendment, alteration or change of this Certificate of Incorporation that adversely affects any of the rights of any series of Preferred Stock set forth in this Certificate of Incorporation or by law;

(viii) effect any redemption or repurchase with respect to any shares of Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements approved by the Corporation's Board of Directors that permit the Corporation to repurchase such shares at no greater amount than their original purchase price upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(ix) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose) any shares of Preferred Stock otherwise than by redemption in accordance with Section 3 hereof or by conversion in accordance with Section 2 hereof;

(x) reissue any share of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise;

(xi) effect any reclassification or other change of any stock, or any recapitalization of the Corporation;

(xii) permit any subsidiary to issue or sell, or obligate itself to issue or sell, except to the Corporation or any of its wholly-owned subsidiaries, any stock of such subsidiary;

(xiii) change the authorized number of directors of the Corporation, or the number as to which the Preferred Stock has special voting rights, or the manner in which the Preferred Stock may exercise its special voting rights;

(xiv) effect any consolidation or merger involving the Corporation or any of its subsidiaries (not including a consolidation or merger involving only the Corporation and one or more of its wholly-owned subsidiaries and no other entities, or a consolidation or merger involving only two or more of the Corporation's wholly-owned subsidiaries and no other entities); or

(xv) effect any transaction or series of transactions by which the Corporation issues securities having voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions, or otherwise having the effect of transferring voting power in excess of fifty percent (50%) of the total voting power of all securities of the Corporation immediately prior to such transaction or transactions (for purposes of determining voting power for this subsection, all securities convertible into Common Stock shall be assumed to have

been converted, and all options, warrants and other rights to acquire Common Stock or other securities convertible into Common Stock, whether then or at some time in the future, shall be assumed to have been exercised).

(b) Notwithstanding any other provision of this Certificate of Incorporation or the Corporation's Bylaws to the contrary, written notice of any action specified in Subsection 4(a) shall be given to each holder of Preferred Stock entitled to vote or consent with respect to such action at least twenty (20) days before the date on which the books of the Corporation shall close or a record shall be taken with respect to such proposed action, or, if there shall be no such date, at least twenty (20) days before the date when such proposed action is scheduled to take place. Any holder of outstanding shares of Preferred Stock may waive any notice required by this Subsection 4(b) by a written document specifically indicating such waiver.

Section 5. Voting Rights.

(a) Voting by Preferred Stock and Common Stock. Except as otherwise required by law or set forth in this Certificate of Incorporation, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to notice of any meeting of stockholders and shall vote together with the holders of Common Stock as a single class upon any matter submitted to the stockholders for a vote. With respect to all questions as to which, by law or by this Certificate of Incorporation, stockholders are required to vote by classes or series, each of the Series A Preferred Stock and Series B Preferred Stock shall vote as separate classes apart from the Common Stock. Shares of Common Stock, Series A Preferred Stock and Series B Preferred Stock shall entitle the holders thereof to the following number of votes on any matter as to which they are entitled to vote:

(i) holders of Common Stock shall have one vote per share; and

(ii) holders of Series A Preferred Stock and Series B Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Series A Preferred Stock or Series B Preferred Stock (as the case may be) held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the date of any written consent.

(b) Election of Directors.

(i) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series A Preferred Stock (voting as a separate single class) will elect two (2) directors.

(ii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Series B Preferred Stock (voting as a separate single class) will elect two (2) directors.

(iii) At each election of the Corporation's directors, the holders of a majority in interest of the then issued and outstanding shares of Common Stock (voting as a separate single

class, and excluding shares of Preferred Stock convertible into shares of Common Stock) will elect three (3) directors.

(iv) At each election of the Corporation's directors, the holders of a majority in interest of the Common Stock, Series A Preferred, and Series B Preferred (voting as a single class on an as-converted basis), will elect one (1) director.

(v) Notwithstanding any Bylaw provisions to the contrary, only the stockholders entitled to elect a particular director shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, all in accordance with the applicable provisions under Delaware law.

(c) Number of Board of Directors. Any provision of the Bylaws of the Corporation to the contrary notwithstanding, the number of directors constituting the entire Board of Directors of the Corporation may not be increased above eight (8) without the prior written consent of the holders of at least a majority of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class).

(d) Calling of Stockholder Meetings. In addition to any rights which may be available under the Corporation's Bylaws or otherwise under law, the holders of not less than twenty-five percent (25%) in voting power of the then issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting as a single class) shall be entitled to call meetings of the stockholders of the Corporation. Within five (5) business days after written application by such holders of Preferred Stock, the President or Secretary, or such other officer of the Corporation as may be authorized in the Bylaws of the Corporation to give notice of meetings of stockholders of the Corporation, shall notify each stockholder of the Corporation entitled to such notice of the date, time, place and purpose of such meeting. No meeting of stockholders called pursuant to this Subsection 5(d) shall take place more than fourteen (14) days after the date notice of such meeting is given.

(e) Vacancies on Board.

(i) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of any series of Preferred Stock voting as a separate single class, the remaining director or directors so elected by the holders of such series of Preferred Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of such series of Preferred Stock, then the holders of a majority of the shares of such series of Preferred Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(ii) In the case of any vacancy in the office of a director occurring among the directors elected by the holders of the Common Stock voting as a separate single class, the remaining director or directors so elected by the holders of the Common Stock may, by affirmative vote of a majority thereof (or the remaining director so elected if there is but one) elect a successor or successors to hold the office for the unexpired term of the director or

directors whose place or places shall be vacant. If there is no director remaining who had been elected by the holders of the Common Stock, then the holders of a majority of the shares of the Common Stock shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant.

(f) Termination of Certain Voting Rights. The method for election of directors set forth in Subsection 5(b) above, the restriction on the size of the Corporation's Board of Directors set forth in Subsection 5(c) above and the ability of the holders of Preferred Stock to call a stockholder meeting set forth in Subsection 5(d) above shall all automatically terminate and be of no further force or effect upon the earliest to occur of (1) a Qualified Public Offering, (2) the merger or consolidation of the Corporation with or into any other corporation or entity that results in all Preferred Stock being converted into Common Stock (unless stockholders of the Corporation immediately prior to such transaction are holders of at least a majority of the voting securities of the surviving or acquiring corporation thereafter, and for the purposes of this calculation, voting securities of the surviving or acquiring corporation which any stockholder of the corporation owned immediately prior to such merger or consolidation as stockholders of another party to the transaction shall be disregarded) or (3) when less than 1,000,000 shares of Preferred Stock (excluding shares of Common Stock issued upon the conversion of any shares of Preferred Stock) are outstanding.

Section 6. Dividends.

(a) The holders of Preferred Stock shall be entitled to receive, when and if declared by the Corporation's Board of Directors, out of any funds legally available therefor, preferential non-cumulative dividends in cash at the rate of (i) five and four-hundredths cents ($0.0504) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series A Preferred Stock, and (ii) eleven and forty-four-hundredths cents ($0.1144) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations or the like with respect to such shares) *per annum* for each share of Series B Preferred Stock. Any such dividends shall be distributed ratably among the holders of Series A Preferred Stock and Series B Preferred Stock in proportion to the full amount each such holder is otherwise entitled to receive under this Subsection 6(a).

(b) No dividends or other distributions (whether payable in cash, securities, property or other assets) shall be paid on any Common Stock until (i) all dividends accrued or declared but unpaid on the Preferred Stock shall have been paid in full and (ii) in the event that the Corporation's Board of Directors have not declared a dividend on the Preferred Stock during the then-current calendar year, all dividends are paid in full on the Preferred Stock as if such Board had declared a dividend on the Preferred Stock pursuant to Subsection 6(a) above during the then-current calendar year.

(c) Subject to Subsection 6(b) above, dividends and distributions may be declared and paid on Common Stock from funds lawfully available therefor as and when determined by the Board of Directors of the Corporation; provided, however, that when and as dividends and distributions are declared and paid on shares of Common Stock, the Corporation shall declare and pay at the same time to each holder of Preferred Stock, in addition to that which may be paid to satisfy the conditions set forth in Subsection 6(b) above, a dividend or distribution equal to the

dividend or distribution which would have been payable to such holder if the shares of Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution.

(d) No dividends or distributions shall be declared or paid on the Common Stock or Preferred Stock except as set forth in this Section 6.

(e) As used herein, "distribution" means the transfer of cash or property without consideration, whether by way of dividend or otherwise (except a dividend in shares of Common Stock) or the purchase of shares of capital stock of the Corporation for cash or property.

(f) The prohibition on payment of dividends and other distributions set forth in Subsection 6(d) above shall not apply to:

(i) Dividends payable solely in the Common Stock of the Corporation approved by the board of directors (including each of the Preferred Directors);

(ii) Acquisitions of Common Stock by the Corporation at a price not greater than the amount paid by service providers for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, so long as such acquisition is approved by the board of directors (including each of the Preferred Directors);

(iii) Acquisitions of Common Stock by the Corporation pursuant to its right of repurchase set forth in the Stock Repurchase Agreement, dated as of May 25, 2001, among the Corporation, Michael D. Hooven and Susan Spies;

(iv) Acquisitions of stock in exercise of the Corporation's right of first refusal upon a proposed transfer approved by the board of directors (including each of the Preferred Directors); or

(v) A distribution pursuant to Section 1 above.

Section 7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

Section 8. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the shares of Common Stock.

Section 9. Notices. All notices and other communications to any party required or permitted to be sent pursuant to this Article IV (collectively, "Notices") shall be contained in a written instrument addressed to such party at such party's address as it appears on the books of the Corporation and shall be deemed given (a) when delivered in person or duly sent by fax showing confirmation of receipt, (b) five (5) days after being duly sent by first class mail, postage prepaid (other than in the case of Notices to or from any non-U.S. resident, which Notices must be sent in the manner specified in clause (a) or (c)), or (c) two (2) days after being duly sent by DHL, Fedex or other recognized express international courier service.

**EXHIBIT B**

**Capitalization Table.**

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| US Venture Partners | 3,968,254 | 4,393,705 | 1,200,700 | 360,210 | | 0 | 9,922,869 | 28.598% |
| Camden Partners | | 3,496,503 | | | | | 3,496,503 | 10.077% |
| Charter Ventures | 1,587,302 | 930,070 | 473,217 | 141,966 | | | 3,132,555 | 9.028% |
| Foundation Medical Partners, L.P. | | 2,097,902 | | | | | 2,097,902 | 6.046% |
| Hooven, Michael D. - Irrevocable Trust | | | | | 1,270,000 | | 1,270,000 | 3.660% |
| Spies, Susan - Irrevocable Trust | | | | | 1,270,000 | | 1,270,000 | 3.660% |
| Drachman, David | | | | | | 1,200,000 | 1,200,000 | 3.458% |
| Weldon Foundation, The | 810,125 | | 105,944 | 31,783 | | | 947,852 | 2.732% |
| Harrison, M.D. Donald C. | 372,916 | | 111,595 | 33,478 | 250,000 | 43,000 | 810,989 | 2.337% |
| New England Partners Capital, L.P. | | 699,301 | | | | | 699,301 | 2.015% |
| Partisan Management Group Inc. | 545,767 | | 105,944 | 31,783 | | | 683,494 | 1.970% |
| Robards, Karen P. | 165,740 | 209,790 | 66,391 | 19,917 | 189,000 | 15,000 | 665,838 | 1.919% |
| Cassidy, Karen J. | 82,870 | | 24,721 | 7,416 | 490,000 | 0 | 605,007 | 1.744% |
| Weldon, Carol J. | 82,429 | | 216,832 | 65,050 | 140,000 | | 504,311 | 1.453% |
| Weldon, Norm | | | | | 465,000 | 0 | 465,000 | 1.340% |
| Hooven, Michael D. | 41,435 | | | | | 350,000 | 391,435 | 1.128% |
| Lifschultz, Lowell S. | 165,740 | | 66,391 | 19,917 | | 15,000 | 267,048 | 0.770% |
| Fischer, Frank M. | 41,214 | | 16,951 | 5,085 | 175,000 | | 238,250 | 0.687% |
| Sherman, Jon | | | | | | 210,000 | 210,000 | 0.605% |
| D'Augustine, Richard J. | 41,435 | | 10,595 | 3,178 | 140,000 | 7,500 | 202,708 | 0.584% |
| Murray, David | | | | | 199,990 | 0 | 199,990 | 0.576% |
| Hudson, Utako K. | 41,214 | | 12,713 | 3,814 | 140,000 | | 197,741 | 0.570% |
| Kullback, William | | | | | | 180,000 | 180,000 | 0.519% |
| Brooke, Paul A. | | | | | 175,000 | | 175,000 | 0.504% |
| Privitera, Salvatore | | | | | | 175,000 | 175,000 | 0.504% |
| Ogle, Raymond W. | 41,435 | | 12,713 | 3,814 | 84,000 | 7,500 | 149,462 | 0.431% |
| Lifschultz, Elizabeth H. | | 147,902 | | | | | 147,902 | 0.426% |
| Chaldekas, James A. | | | | | 140,000 | | 140,000 | 0.403% |
| Colman, Frederic C. | | | | | 140,000 | | 140,000 | 0.403% |
| Davis, James E. | | | | | 140,000 | | 140,000 | 0.403% |
| Davis, Joseph H. | | | | | 140,000 | | 140,000 | 0.403% |
| Greenfield Family, L.P. | 79,365 | | 24,014 | 7,204 | | | 110,583 | 0.319% |
| Wolf, M.D. Randall K. | 39,683 | | 16,245 | 4,873 | 14,000 | 28,000 | 102,801 | 0.296% |
| Abruzzo, Elsa | | | | | | 100,000 | 100,000 | 0.288% |
| Smith, M.D. C. Daniel | | | | | 91,000 | | 91,000 | 0.262% |
| Friedman, PhD Mark | | | | | | 90,000 | 90,000 | 0.259% |
| Cambridge, Steve | | | | | | 85,000 | 85,000 | 0.245% |
| Santamore, Ph.D. William P. | 41,214 | | | | 31,500 | 10,500 | 83,214 | 0.240% |
| Lorry, Brandon | | | | | 20,000 | 60,000 | 80,000 | 0.231% |
| Spies, Erika A. & Eberhard H. - Irrevocable Trust | | | | | 80,000 | | 80,000 | 0.231% |
| Freund, John G. | | | | | 70,000 | | 70,000 | 0.202% |
| Fuchs, Betty C./Lawrence H. | | | | | 70,000 | | 70,000 | 0.202% |
| Goldin, M.D. Sylvan | | | | | 70,000 | | 70,000 | 0.202% |
| Hooven, Brian A. - Irrevocable Trust | | | | | 70,000 | | 70,000 | 0.202% |
| Leetmaa-Livingston, Bonnie | | | | | 70,000 | | 70,000 | 0.202% |
| Mazzola, Christian L. - Revocable Trust | | | | | 70,000 | | 70,000 | 0.202% |
| Paulson, Photios | | | | | 70,000 | | 70,000 | 0.202% |
| Richardson, Ted | | | | | 52,500 | 17,500 | 70,000 | 0.202% |
| Walsh, Richard | | | | | | 70,000 | 70,000 | 0.202% |
| Winkler, Matt | | | | | | 70,000 | 70,000 | 0.202% |
| Woolf, Patricia K. | | | | | 70,000 | | 70,000 | 0.202% |
| Stern, Roger | | 69,930 | | | | | 69,930 | 0.202% |
| Gaughan, Terry | | | | | | 61,898 | 61,898 | 0.178% |
| Staats, Peter | | | | | 5,000 | 55,000 | 60,000 | 0.173% |
| Lucky, James | | | | | | 55,000 | 55,000 | 0.159% |
| Drach, Greg | | | | | | 50,000 | 50,000 | 0.144% |
| Simmons, June | | | | | | 50,000 | 50,000 | 0.144% |
| Spies, Susan | | | | | | 50,000 | 50,000 | 0.144% |
| Mazzola, Christian L. | 41,214 | | | | | | 41,214 | 0.119% |
| Hooven, Carole K. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, Frederick H. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, John E. | | | | | 40,000 | | 40,000 | 0.115% |
| Hooven, Michael C. | | | | | 40,000 | | 40,000 | 0.115% |
| Duke Univ. Special Venture Fund | 39,683 | | | | | | 39,683 | 0.114% |
| Kline, Robert A. | 39,683 | | | | | | 39,683 | 0.114% |
| Martin, Jr. John B. | | | | | 35,000 | | 35,000 | 0.101% |
| Pinchuk, Leonard | | | | | 35,000 | | 35,000 | 0.101% |
| Spies, Eberhard/Erika | | | | | 35,000 | | 35,000 | 0.101% |
| Zapolanski, M.D. Alex | | | | | | 35,000 | 35,000 | 0.101% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O Street Corporation | | 34,965 | | | | 34,965 | 0.101% |
| D’Augustine, Merida A. | 24,861 | | 7,063 | 2,119 | | 34,043 | 0.098% |
| Ladd, Doug | | | | | 31,250 | 31,250 | 0.090% |

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| Miller, Ken | | | | | | 30,000 | 30,000 | 0.086% |
| Wainscott, Mark | | | | | | 26,874 | 26,874 | 0.077% |
| Kerr, Janice | | | | | | 26,400 | 26,400 | 0.076% |
| Alexander, Patrick | | | | | | 26,000 | 26,000 | 0.075% |
| Beckjorden, Thomas | | | | | | 25,700 | 25,700 | 0.074% |
| Gillinov, A Marc | | | | | | 25,000 | 25,000 | 0.072% |
| McCarthy, MD, Patrick | | | | | | 25,000 | 25,000 | 0.072% |
| Weldon, Cynthia M. as custodian for Michael J. Weldon | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, David J. | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Marijke L. | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, R. David | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Andrew M. Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Christopher R. Weldon | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Eric Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Weldon, Thomas D. as custodian for Mathew T. Dodson | | | | | 25,000 | | 25,000 | 0.072% |
| Becker (Gabbard), Jane | | | | | 22,500 | | 22,500 | 0.065% |
| Flanagan, Martin | | | | | | 21,500 | 21,500 | 0.062% |
| Allen, Steven | | | | | | 20,000 | 20,000 | 0.058% |
| Bantivoglio, Robert | | | | | | 20,000 | 20,000 | 0.058% |
| Beams, Raymond | | | | | | 20,000 | 20,000 | 0.058% |
| Ellenson, Scott | | | | | | 20,000 | 20,000 | 0.058% |
| Henderson, Kevin | | | | | | 20,000 | 20,000 | 0.058% |
| Hooven, Abigail | | | | | 20,000 | | 20,000 | 0.058% |
| Hooven, Maxwell | | | | | 20,000 | | 20,000 | 0.058% |
| Hooven, Molly | | | | | 20,000 | | 20,000 | 0.058% |
| Kent, James | | | | | | 20,000 | 20,000 | 0.058% |
| Lafer, Mark | | | | | | 20,000 | 20,000 | 0.058% |
| Lange, Anne | | | | | 20,000 | | 20,000 | 0.058% |
| Mathiason, Anthony | | | | | | 20,000 | 20,000 | 0.058% |
| Palmer, J. Reneee | | | | | | 20,000 | 20,000 | 0.058% |
| Poole, J. Eric | | | | | | 20,000 | 20,000 | 0.058% |
| Rybak, Waltraut | | | | | 20,000 | | 20,000 | 0.058% |
| Seith, Douglas | | | | | | 20,000 | 20,000 | 0.058% |
| Shapiro, Amy | | | | | | 20,000 | 20,000 | 0.058% |
| Strong, Stewart | | | | | | 20,000 | 20,000 | 0.058% |
| Ball, Laura | | | | | | 15,000 | 15,000 | 0.043% |
| Frazier, Kenneth | | | | | | 15,000 | 15,000 | 0.043% |
| Haines, Randy | | | | | | 15,000 | 15,000 | 0.043% |
| Jacobs, Jonathan | | | | | | 15,000 | 15,000 | 0.043% |
| Kaganov, Alan L. | | | | | | 15,000 | 15,000 | 0.043% |
| Krauss, Anita | | | | | | 15,000 | 15,000 | 0.043% |
| McCarthy, Sean | | | | | | 15,000 | 15,000 | 0.043% |
| Scent, Dianne | | | | | 15,000 | | 15,000 | 0.043% |
| Shaffer, Maureen | | | | | | 15,000 | 15,000 | 0.043% |
| Vasquez, David | | | | | | 15,000 | 15,000 | 0.043% |
| Wichman (Luken), Sarah | | | | | | 15,000 | 15,000 | 0.043% |
| Schneeberger, M.D. Eric William | | | | | | 14,500 | 14,500 | 0.042% |
| Benussi, M.D. Stefano | | | | | | 14,000 | 14,000 | 0.040% |
| Daniell, M.D. James F. | | | | | 14,000 | | 14,000 | 0.040% |
| Haines, M.D. David | | | | | | 14,000 | 14,000 | 0.040% |
| McKernan, M.D. J. Barry | | | | | 14,000 | | 14,000 | 0.040% |
| Melo, M.D. Joao | | | | | | 14,000 | 14,000 | 0.040% |
| Patton, Gerald | | | | | | 14,000 | 14,000 | 0.040% |
| Bagley, Barry | | | | | | 10,000 | 10,000 | 0.029% |
| Caldiero-Martinucci, Marilyn | | | | | | 10,000 | 10,000 | 0.029% |
| Cunningham, Jim | | | | | | 10,000 | 10,000 | 0.029% |
| Dlugos, Dan | | | | | 10,000 | | 10,000 | 0.029% |
| Holahan, Terrie | | | | | | 10,000 | 10,000 | 0.029% |
| Kogan, Alexander | | | | | | 10,000 | 10,000 | 0.029% |
| Lund, Thomas W. | | | | | 10,000 | | 10,000 | 0.029% |
| Meade, Connie | | | | | | 10,000 | 10,000 | 0.029% |
| Nakagawa, M.D. Hiroshi | | | | | | 10,000 | 10,000 | 0.029% |
| Palmer, Timothy | | | | | | 10,000 | 10,000 | 0.029% |
| Fishberger, MD Steven | | | | | | 7,500 | 7,500 | 0.022% |
| Carlson, M.D. Mark | | | | | | 7,000 | 7,000 | 0.020% |

| | | | | |
|---|---|---|---|---|
| Harp, Adam | | 7,000 | 7,000 | 0.020% |
| Osher, M.D. Sanford S. | 7,000 | | 7,000 | 0.020% |
| Phillips, M.D. Edward H. | 7,000 | | 7,000 | 0.020% |
| Schuessler, M.D. Richard | | 7,000 | 7,000 | 0.020% |
| Gerding, Annette | 6,125 | | 6,125 | 0.018% |
| Hughett, David | | 6,000 | 6,000 | 0.017% |
| Police, Richard | 5,451 | | 5,451 | 0.016% |
| Craft, Laura | | 5,000 | 5,000 | 0.014% |
| Doll, Sean | | 5,000 | 5,000 | 0.014% |
| Evans, Steve | | 5,000 | 5,000 | 0.014% |
| Gauch, Natacha | 5,000 | 0 | 5,000 | 0.014% |
| Hoffman, Joseph | | 5,000 | 5,000 | 0.014% |

Atricure, Inc.
Capital Structure

| Investor | Series A | Series B | Bridge Note | Warrant Coverage 30% | Common | Stock Options | Total Ownership | Total Ownership % |
|---|---|---|---|---|---|---|---|---|
| Kress, M.D. David | | | | | | 5,000 | 5,000 | 0.014% |
| Messerly, Jeffrey | | | | | 5,000 | | 5,000 | 0.014% |
| Millar, Roger MD | | | | | | 5,000 | 5,000 | 0.014% |
| Robinson, Stephen | | | | | | 5,000 | 5,000 | 0.014% |
| Wolff, Chris | | | | | | 5,000 | 5,000 | 0.014% |
| Biehle, Edward | | | | | | 4,000 | 4,000 | 0.012% |
| Hughes, Patrick | | | | | 4,000 | 0 | 4,000 | 0.012% |
| Rister, David | | | | | | 4,000 | 4,000 | 0.012% |
| Sewak, Jon | | | | | | 4,000 | 4,000 | 0.012% |
| Reckelhoff, Jerry | | | | | 3,750 | 0 | 3,750 | 0.011% |
| Fischer, Ann E. | | | | | 3,500 | | 3,500 | 0.010% |
| Park, Christopher | | | | | | 3,500 | 3,500 | 0.010% |
| Wampler, Tamala | | | | | | 3,500 | 3,500 | 0.010% |
| Glithero, Jason | | | | | | 3,000 | 3,000 | 0.009% |
| Martin, Keith | | | | | | 3,000 | 3,000 | 0.009% |
| Dumbauld, Patrick | | | | | 2,500 | 0 | 2,500 | 0.007% |
| Rubio, Craig | | | | | | 2,500 | 2,500 | 0.007% |
| Diniz, Linda | | | | | | 1,500 | 1,500 | 0.004% |
| Sabla, Shannon | | | | | | 1,500 | 1,500 | 0.004% |
| Wright, Vickie | | | | | 1,250 | 0 | 1,250 | 0.004% |
| Greifenkamp, Tom | | | | | 1,000 | 0 | 1,000 | 0.003% |
| Hargis, Richard | | | | | 750 | 250 | 1,000 | 0.003% |
| Mathis, Shannon | | | | | | 1,000 | 1,000 | 0.003% |
| Hendersen, Steven L. | | | | | 875 | | 875 | 0.003% |
| Brewer, Candy | | | | | 700 | 0 | 700 | 0.002% |
| Hasse, John | | | | | 700 | 0 | 700 | 0.002% |
| Hasse, Kathleen | | | | | 700 | 0 | 700 | 0.002% |
| Hegener, Deborah | | | | | 700 | 0 | 700 | 0.002% |
| Koehler, Jane | | | | | 700 | 0 | 700 | 0.002% |
| Mueller, Kenneth | | | | | 700 | 0 | 700 | 0.002% |
| Reynolds, Shelia | | | | | 700 | 0 | 700 | 0.002% |
| Shearer, Kathleen | | | | | 700 | 0 | 700 | 0.002% |
| Stewart, Kevin | | | | | 700 | 0 | 700 | 0.002% |
| Sweeney, Karen | | | | | 700 | 0 | 700 | 0.002% |
| Thomas, Shelia | | | | | 700 | 0 | 700 | 0.002% |
| Jordan, Susan | | | | | | 500 | 500 | 0.001% |
| Adams, Theresa | | | | | | 200 | 200 | 0.001% |
| Kulesza, Cheryl | | | | | | 200 | 200 | 0.001% |
| Sabine, David | | | | | | 200 | 200 | 0.001% |
| Smith, Joshua | | | | | | 100 | 100 | 0.000% |
| **Totals** | 8,293,579 | 12,080,068 | 2,472,029 | 741,607 | 7,144,641 | 3,965,322 | 34,697,246 | 100.00% |
| | | | | | | | | 5,100,000 |
| Total shares of Capital Stock on a Fully-Diluted Basis | | | | | | | 34,824,746 | |
| * Options reserved for conditional option grants | | | | | | 126,500 | | |
| * Options pending board approval | | | | | | 1,000 | | |
| * Options exercised | | | | | | 483,766 | | |
| Options available for future issuance ** | | | | | | 523,412 | | |

**reflects conditional, pending and exercised shares

**EXHIBIT D**

**NOTICE OF BORROWING**

_____, ____

Lighthouse Capital Partners V, L.P.
500 Drake's Landing Road
Greenbrae, CA 94904-3011

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement No. 4631 dated as of March 8, 2005 (as it has been and may be amended from time to time, the "*Loan Agreement,*" initially capitalized terms used herein as defined therein), between **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** and **ATRICURE, INC.** (the "*Company*")

The undersigned is the President and CEO of the Company, and hereby irrevocably requests an Advance under the Loan Agreement, and in that connection certifies as follows:

1. The amount of the proposed Advance is $_____. The business day of the proposed Advance is _____.

2. The Loan Commencement Date for this Advance shall be September 1, 2005.

3. As of this date, no Event of Default, or event which with notice or the passage of time would constitute an Event of Default, has occurred and is continuing, or will result from the making of the proposed Advance, and the representations and warranties of the Company contained in **Section 5** of the Loan Agreement are true and correct in all material respects.

4. No event that could reasonably be expected to have a material adverse effect on the ability of Borrower to fulfill its obligations under the Loan Agreement has occurred since the date of the most recent financial statements, submitted to you by the Company.

The Company agrees to notify you promptly before the funding of the Advance if any of the matters to which I have certified above shall not be true and correct on the Funding Date.

Very truly yours,

**ATRICURE, INC.**

By: _____

Name: _____

Title: _____

**EXHIBIT E**

**INCUMBENCY CERTIFICATE**

The undersigned, Susan Spies, hereby certifies that:

**1.** He/She is the duly elected and acting Secretary of **ATRICURE, INC.,** a Delaware corporation (the "*Company*").

**2.** That on the date hereof, each person listed below holds the office in the Company indicated opposite his or her name and that the signature appearing thereon is the genuine signature of each such person:

| NAME | OFFICE | SIGNATURE |
|---|---|---|
| David J. Drachman | President and Chief Executive Officer | /s/ David J. Drachman |

**3.** Attached hereto as ***Exhibit A*** is a true and correct copy of the Certificate of Incorporation of the Company, as amended, as in effect as of the date hereof.

**4.** Attached hereto as ***Exhibit B*** is a true and correct copy of the Bylaws of the Company, as amended, as in effect as of the date hereof.

**5.** Attached hereto as ***Exhibit C*** is a copy of the resolutions of the Board of Directors of the Company authorizing and approving the Company's execution, delivery and performance of a loan facility with Lighthouse Capital Partners V, L.P.

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate on March 8, 2005.

**ATRICURE, INC.**

By: /s/ Susan Spies

Name: Susan Spies

Title: Secretary

I, the President and Chief Executive Officer of the Company, do hereby certify that Susan Spies is the duly qualified, elected and acting Secretary of the Company and that the above signature is his or her genuine signature.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Officer's Certificate on March 8, 2005.

**ATRICURE, INC.**

By: /s/ David J. Drachman

Name: David J. Drachman

Title: President and Chief Executive Officer

**EXHIBIT F**

**OFFICER'S CERTIFICATE**

The undersigned, to induce **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** ("*Lender*"), to extend or continue financial accommodations to **ATRICURE, INC.,** a Delaware corporation (the "*Borrower*") pursuant to the terms of that certain Loan and Security Agreement dated March 8,2005 (the "*Loan Agreement*"), hereby certifies that on the date hereof:

1. I am the duly elected and acting _____ of Borrower.
2. I am a Responsible Officer as that term is defined in the Loan Agreement.
3. The information submitted herewith is in fact what it purports to be.
4. The information delivered herewith is true, correct and complete
5. Borrower is currently able to meet its obligations as they come due.
6. I understand that Lender is relying upon the truthfulness, accuracy and completeness hereof in connection with the Loan Agreement.
7. I will advise you if it comes to my attention that, as of the date hereof, the information submitted herewith was not in fact true, correct and complete.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on _____.

**ATRICURE, INC.**

By: /s/ David J. Drachman

Name: David J. Drachman

Title: President

**EXHIBIT G**

**AUTHORIZATION FOR AUTOMATIC PAYMENT**

The undersigned **ATRICURE, INC.** ("*Borrower*") authorizes **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** and any and all affiliated funds (collectively, "*Lender*") and the bank / financial institution ("*Bank*") named below to initiate variable debit and/or credit entries to Borrower's deposit, checking or savings accounts as designated below and to cause funds transfers to an account of Lender as payment of any and all amounts due under the Loan and Security Agreement between Borrower and Lender dated March 8, 2005 (the "*Loan Agreement*").

**1.** Lender is hereby authorized to initiate variable debit and/or credit transactions and resulting funds transfers in Borrower's designated accounts with respect to amounts calculated by Lender to be due and owing to Lender by Borrower periodically under the Loan Agreement. Borrower consents to all such debit and/or credit transactions and resulting funds transfers and hereby authorizes Lender to take all such actions as may be required by Bank with respect to such transactions. Borrower acknowledges and agrees that such credit and/or debit entries may be made in amounts due under the Loan Agreement in order to cause timely payments as required by the terms of the Loan Agreement.

**2.** Borrower hereby authorizes Lender to release to Bank all information concerning Borrower that may be necessary or desirable for Bank to investigate or recover any erroneous funds transfers that may occur.

**3.** Borrower acknowledges and agrees that all such debit and/or credit transactions and funds transfers are intended to be made through an Automated Clearing House system and in compliance with the NACHA Rules and in compliance with Bank's security procedures.

**4.** Borrower represents and warrants that the account information set forth below is accurate and complete and that each of the account(s) set forth below is a business account maintained in Borrower's name and for Borrower's account.

This Consent shall be effective as of March 8, 2005 and shall remain in effect until the Loan Agreement has been terminated. Any cancellation by Borrower of this consent shall (i) be made in writing and (ii) delivered to Bank and Lender in such time as to afford Bank and Lender a reasonable opportunity to act on said cancellation.

Huntington Bank
(Name of Borrower's Bank)

| 105 East Fourth Street-Suite 200A | Cincinnati | OH | 45202 |
|---|---|---|---|
| (Address of Bank) | (City) | (State) | (Zip Code) |

Bank Routing Number _____
*(between these symbols " /:" ":/" on bottom left of check)*

Account Number: 01651119284 (checking / deposit / savings) *(circle one)*

**Copy of a voided check is attached to this form**

Borrower Name: **ATRICURE, INC.**
Borrower Address: 6033 Schumacher Park Drive
Cincinnati, Ohio 45069

Authorized by: /s/ David J. Drachman

Its: David J. Drachman

Date authorized: 3/8/05

Internal ACH Authorizations from Lender:

Approved by: _____ Date: _____

**EXHIBIT H**

**NEGATIVE PLEDGE AGREEMENT**

**THIS NEGATIVE PLEDGE AGREEMENT** is made as of March 8, 2005, by and between **ATRICURE, INC.** ("*Borrower*") and **LIGHTHOUSE CAPITAL PARTNERS V, L.P.** ("*Lender*").

In consideration of the Loan and Security Agreement between the parties of proximate date herewith (the "*Loan Agreement*"),. Borrower agrees as follows:

Except as otherwise permitted in the Loan Agreement, Borrower shall not sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber any of Borrower's intellectual property, including, without limitation, the following:

**(a)** Any and all copyright rights, copyright applications, copyright registration and like protection in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held (collectively, the "*Copyrights*");

**(b)** Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

**(c)** Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;

**(d)** All patents, patent applications and like protections, including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including, without limitation, the patents and patent applications (collectively, the "*Patents*");

**(e)** 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 (collectively, the "*Trademarks*");

**(f)** Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for an collect such damages for said use or infringement of the intellectual property rights identified above;

**(g)** Any and all licenses or other rights to use any of the Copyrights, Patents or Trademarks and all license fees and royalties arising from such use to the extent permitted by such license or rights

**(h)** Any and all amendments, extensions, renewals and extensions of any of the Copyrights, Patents or Trademarks; and

**(i)** Any and all proceeds and products of the foregoing, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

It shall be an Event of Default under the Loan Agreement if there is a breach of any term of this Negative Pledge Agreement Borrower agrees to properly execute all documents reasonably required by Lender in order to fulfill the intent and purposes hereof.

**ATRICURE, INC.**

By: /s/ David J. Drachman

Name: David J. Drachman

Title: President

**LIGHTHOUSE CAPITAL PARTNERS V, L.P.**

By: **LIGHTHOUSE MANAGEMENT PARTNERS V, L.L.C.,** its general partner

By: _____

Name: _____

Title: _____

**EXHIBIT I**

**CONTROL AGREEMENT**

[In form and substance acceptable to Lender in its reasonable discretion]

March 8, 2005

**Morgan Stanley & Co. Incorporated (the "Broker")**
**555 California Street 14th Floor**
**San Francisco, CA 94104**

Re: **Notice of Fledge and Security**

Gentlemen:

Please be advised that the undersigned, AtriCure Inc. ("Pledgor"), has pledged a security interest in Account No. 14-78AD9 (the "Account") held by Broker, as securities intermediary, and in all of the securities, proceeds, cash or other assets now or hereafter held in the Account (collectively, the "Collateral"), to Lighthouse Capital Partners V, L.P. ("Pledgee") pursuant to the terms and provisions of a certain Venture Loan Proposal (the "Agreement"), dated March 8, 2005.

Broker, Pledgor and Pledgee, by signing this letter, hereby agree as follows:

a) The Account shall be retitled AtriCure Inc. - Pledgor/ Lighthouse Capital Partners V, L.P. - Pledgee";

b) Pledgee has a security interest in the Collateral and is authorized to instruct the Broker with regard to the Account;

c) Broker is hereby notified of Pledgee's security interest, and agrees to comply with all instructions and entitlement orders of Pledgee with regard to the Account. Broker shall not comply with instructions and entitlement orders with respect to the Collateral or the Account that are originated by the Pledgor except as described in Paragraph D below. Broker is also hereby authorized and agrees to send duplicate copies of any and all statements and confirmations, as well as any other appropriate correspondence, relating to the Account directly to the Pledgee at the address indicated below, or to such other address as Pledgee may designate in writing. This pledge will remain in full force and effect until Pledgee notifies Broker in writing to the contrary;

d) Pledgee hereby instructs Broker that until further instruction in writing from an Authorized Officer of Pledgee (as defined below) that Pledgee is assuming exclusive control over the Account ("Notice of Exclusive Control"), the Broker shall comply with directions of Pledgor with respect to any transactions, including withdrawals, in the Account. Notwithstanding anything contained herein, upon receipt of a Notice of Exclusive Control (it being understood that Broker shall have no duty or obligation whatsoever to investigate or determine whether the Notice of Exclusive Control was rightfully or legally issued). Broker shall only follow the directions and instructions of

Pledgee with regard to the Account. In that case, if Pledgee so requests, Broker will proceed to liquidate the assets of the Account in accordance with Pledgee's instructions and to deliver the proceeds to Pledgee.

For purposes of this Agreement, "Authorized Officer of Pledgee" shall refer to any one of the following individuals: Thomas Conneely or Richard Stubblefield. If Pledgee finds it necessary to designate a replacement for any of the designated Authorized Officers of Pledgee, written notice of replacement shall be given to Broker, which notice shall be signed by the President, an Executive Vice President, a Senior Vice President, or such other officer of Pledgee as Broker may approve. However, Broker shall be entitled to rely on any notice it receives from someone whom it reasonably believes is an Authorized Officer of Pledgee;

e) Broker shall have no obligation to monitor the Account for any purpose in connection with the pledge granted hereunder. The Pledgee accepts and acknowledges full responsibility for reviewing daily confirmations and monthly statements to ensure that it is adequately secured;

f) Pledgor and Pledgee hereby agree to indemnify and hold harmless Broker, its affiliates, officers, and employees from and against any and all claims, causes of actions, liabilities, lawsuits, demands, and/or damages, including, without limitation, any and all court costs and reasonable attorney's fees, that might result by reason of the actions of Broker under this Agreement. Broker shall not be responsible for any losses, claims, damages, liabilities and expenses incurred by Pledgor or Pledgee, except to the extent that such losses, claims, damages, liabilities or expenses arise out of the bad faith, gross negligence, or criminal acts or omissions on the part of Broker;

g) Broker may terminate this Agreement at any time by canceling the Account and transferring all funds and securities in the Account to Pledgee;

h) As of the date hereof, the Collateral has not been paid to or withdrawn by the Pledgor; Broker is not in receipt of any notice of withdrawal or redemption with regard to the Collateral or notice not to renew the Account, and Broker has not given any notice that the Account will not be renewed or extended, as the case may be;

i) Broker's records indicate that the value of the Collateral, as of the date hereof, is approximately _____;

j) Broker subordinates any right of offset Broker may now or hereafter have against the Collateral for any indebtedness now or hereafter owing to Broker by the Pledgors to the security interest of Pledgee; provided that Broker shall continue to have a first perfected security interest in the Collateral with respect to any charges incurred in connection with the operation of the Account, including, but not limited to, fees, commissions and any costs related to unsettled securities transactions.

k) This Agreement shall be governed by the law of the State of New York, excluding its conflict of law rules. The parties hereby agree that (i) the "securities intermediary's jurisdiction" with respect to the Account and the Collateral is New York and (ii) the parties shall not agree with any other person that such securities intermediary's jurisdiction is any jurisdiction other than New York.

Very truly yours,
**ATRICURE INC.**

/s/ David J. Drachman

By: David J. Drachman

Title: President

Read and Agreed to:
**MORGAN STANLEY & CO. INCORPORATED**

By _____

Name:

Title:

**LIGHTHOUSE CAPITAL PARTNERS V, L.P.**

By: Lighthouse Management Partners V, L.L.C.
its general partner

By _____

Name: Thomas Conneely

Title: Vice President

Address: 500 Drakes Landing Road
Greenbrae, CA 94904
Attn: Contracts Administration

**SCHEDULE 1**

**DISCLOSURE SCHEDULE**

**DEPOSIT AND SECURITIES ACCOUNTS**

| | Account Information: | Contact Information for Account: |
|---|---|---|
| **Account Number 1** | **Company Name: Huntington National Bank**<br>**Address: Fourth & Walnut Center**<br>**105 East Fourth Street-Suite 200A**<br>**City, State, Zip: Cincinnati, OH 45202**<br>**Phone:**<br>**Fax:**<br>**Type of Account: Checking**<br>**Account number: 01651119284**<br>**Approximate Dollar Amount: $750,000.00** | **Contact Name: Lisa Kuethe**<br>**Phone: 513-762-1883**<br>**Fax: 513-762-5191**<br>**E-mail: lisa.kuethe@huntington.com** |
| **Account Number 2** | **Company Name: Morgan Stanley**<br>**Address: 555 California Street**<br>**City, State, Zip: San Francisco, CA 94104**<br>**Phone: 415-576-2004**<br>**Fax:**<br>**Type of Account: Investment**<br>**Account number: 14-78AD9**<br>**Approximate Dollar Amount: $2,785,000** | **Contact Name: Tom Piliero**<br>**Phone: 475-576-2016**<br>**Fax: 415-576-2060**<br>**E-mail:**<br>**Thomas.Piliero@morganstanley.com** |
| **Account Number 3** | **Company Name:**<br>**Address:**<br>**City, State, Zip:**<br>**Phone:**<br>**Fax:**<br>**Type of Account:**<br>**Account number:**<br>**Approximate Dollar Amount:** | **Contact Name:**<br>**Phone:**<br>**Fax:**<br>**E-mail:** |
| **Account Number 4** | **Company Name:**<br>**Address:**<br>**City, State, Zip:**<br>**Phone:**<br>**Fax:**<br>**Type of Account:**<br>**Account number:**<br>**Approximate Dollar Amount:** | **Contact Name:**<br>**Phone:**<br>**Fax:**<br>**E-mail:** |

**PERMITTED LIENS**

**EXISTING LIENS** None

**SUBSIDIARIES**

None

**LITIGATION AND ADMINISTRATIVE PROCEEDINGS**

None

**BUSINESS PREMISES**

[TO BE PROVIDED BY BORROWER – indicate street address and landlord contact information]

| | Each Location Address where Lighthouse Capital Partners has financed assets: | Landlord/Property Management Information: |
|---|---|---|
| **Current Headquarters (Location 1)** | **Contact Name: June Simmons**<br>**Address: 6033 Schumacher Park Dr.**<br>**City, State, Zip: Cincinnati, OH 45069**<br>**Phone: (513) 755-4108**<br>**Fax: (513) 755-4108** | **Contact Name: Doug Flack**<br>**Company Name: Schumacher Dugan**<br>**Address: 6355 Centre Park Drive**<br>**City, State, Zip: West Chester, OH 45069**<br>**Phone: 513-777-9800**<br>**Fax: 513-777-2642** |
| **Location Asset Location** | **Contact Name: Tim Flaherty**<br>**Company Name: Enable Medical**<br>**Address: 6345 Centre Par Drive**<br>**City, State, Zip: West Chester, OH 45069**<br>**Phone: 513-755-7600**<br>**Fax: 513-755-7676** | **Contact Name:**<br>**Company Name: Broadway Companies**<br>**Address: P.O. Box 13418**<br>**City, State, Zip: Dayton, OH 45413**<br>**Phone: 937-890-1888**<br>**Fax:** |
| **Location Asset Location** | **Contact Name:**<br>**Company Name: Tech-Way Industries, Inc.**<br>**Address: 301 Industrial Drive/PO Box 517**<br>**City, State, Zip: Franklin, OH 45005**<br>**Phone: 937-746-1004**<br>**Fax: 937-746-3867** | **Contact Name:**<br>**Company Name:**<br>**Address:**<br>**City, State, Zip:**<br>**Phone:**<br>**Fax:** |

| | |
|---|---|
| Exhibit H | Form of Negative Pledge Agreement |
| Exhibit I | Control Agreement |
| Schedule 1 | Disclosure Schedule |

**Exhibit 23.1**

**Consent of Independent Registered Public Accounting Firm**

We consent to the use in this Amendment No. 1 to Registration Statement No. 333-124197 of our report dated April 12, 2005 relating to the financial statements of AtriCure, Inc. appearing in the Prospectus, which is part of such Registration Statement. We also consent to the reference to us under the headings “Selected Financial Data” and “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Cincinnati, Ohio
June 13, 2005

**Exhibit 23.2**

**Consent of Independent Registered Public Accounting Firm**

We consent to the use in this Amendment No. 1 to Registration Statement No. 333-124197 of AtriCure, Inc., of our report dated April 12, 2005 related to the financial statements of Enable Medical Corporation as of and for the years ended December 31, 2004 and 2003, appearing in the prospectus, which is part of such Registration Statement and to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Cincinnati, Ohio
June 13, 2005

**Epstein Becker & Green, P.C.**
**250 Park Avenue**
**New York, NY 10177**
DIRECT:
(212) 351-4522
tpolin@ebglaw.com

June 14, 2005

**VIA EDGAR AND FEDERAL EXPRESS**

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attn: Peggy A. Fisher, Assistant Director

Re: **AtriCure, Inc.**
**Registration Statement on Form S-l**
**Filed April 20, 2005**
**File No. 333-124197**

Ladies and Gentlemen:

On behalf of AtriCure, Inc. ("AtriCure"), we are filing, via EDGAR, one copy of Amendment No. 1 to the above-referenced Registration Statement. In addition, we have sent to Ms. Mary Beth Breslin at the Commission, via overnight courier, five courtesy copies of Amendment No. 1, two of which have been marked to show changes that have been made to the Registration Statement.

Amendment No. 1 incorporates changes requested by the staff in its letter of comments dated May 12, 2005 and certain other changes. With respect to the specific comments set forth in the staff's letter, please be advised as follows (all paragraphs being captioned and numbered to correspond to the captions and numbers set forth in the letter of comments):

**1. Please confirm that any preliminary prospectus you circulate will include all non-Rule 430A information. This includes the price range and related information based on a *bona fide* estimate of the public offering price within that range, and other information that was left blank throughout the document. Also note that we may have additional comments after you file this information.**

We confirm that the preliminary prospectus will include all non-Rule 430A information, including the price range and related information based on a *bona fide* estimate of the public offering price within that range and other information that was left blank throughout the initial document.

**2. Please note that we will also have comments when you complete the numerous blanks throughout the filing that are not price related.**

We note that you may have additional comments.

Cover Page

**3. In order to comply with the staff's long standing position, please remove the language designating UBS Investment Bank and Piper Jaffray as "joint book-running managers."**

We have removed the language designating UBS Investment Bank and Piper Jaffray as "joint book-running managers."

Summary – Page 1

**4. Expand the first paragraph to provide more detailed and specific information regarding the current status of FDA approval, including the steps you need to take before you can obtain FDA approval and an estimate of how long it may take before you receive FDA approval for the treatment of AF. Define the term "off- label" use.**

We have provided in a new third paragraph of the Summary more detailed and specific information regarding the current status of FDA approval, including the steps AtriCure will need to take before it can obtain FDA approval and an estimate of how long it may take before AtriCure intends to seek FDA approval for the treatment of AF. We have also defined the term "off- label" use in the second paragraph, where it is now first used.

**5. In the second paragraph where you use the term "full commercial release," expand to explain the current FDA-approved uses of your product and the extent to which your product is so used.**

We have expanded the second and third paragraphs of our Business section to explain the current FDA-approved uses of the AtriCure bipolar ablation system and made it clear that AtriCure does not believe that its system is being used for its FDA cleared uses. We have also revised the disclosure to refer to "*general* commercial release."

**6. We note your substantial disclosure here and in the Business section describing the market opportunity for the use of your product in the treatment of atrial**

**fibrillation. Reconcile this disclosure with the fact that your product has not been approved by the FDA for the treatment of atrial fibrillation and you are not permitted to market your product for such use until you have received approval from the FDA. Revise to discuss the restrictions on your ability to market or promote your system for off-label uses and to train physicians to use your system for ablation of cardiac tissue or the surgical treatment of AF, and limit appropriately your discussion of the market opportunity for the use of your product to treat atrial fibrillation.**

Although the AtriCure bipolar ablation system has not been approved by the FDA for the treatment of atrial fibrillation and AtriCure is not permitted to promote its products for such use until it has received approval from the FDA, the FDA does not regulate the practice of medicine and, accordingly, doctors are lawfully using the AtriCure bipolar ablation system for the treatment of AF, which AtriCure views as its market opportunity. We have revised the disclosure in the Summary and in the Business section to discuss the restrictions on AtriCure's ability to market or promote its system for off-label uses and to train physicians to use its system for the ablation of cardiac tissue or the surgical treatment of AF. We have also added disclosure in the final paragraph of Our Market in the Summary section regarding restrictions on AtriCure's ability to market its bipolar ablation system.

**7. Please revise your disclosure, here and in the business section, to state briefly the basis for your beliefs that:**

- **Your system is "safe, rapid, and reliable," and that surgeons have used your system "to safely, rapidly and reliably" create transmural lesions, particularly considering your adverse event disclosure on pages 52–53 and your disclosure on page 8 that limited clinical data is available relating to the safety and effectiveness of your system,**
- **Your system "reduces the risk of blood clots, strokes and damage to adjacent anatomical structures," and**
- **"Leading cardiothoracic surgeons have widely adopted" your system as a "standard treatment alternative" for atrial fibrillation.**

**Also supplementally provide support for these findings. Please clearly mark the supporting statements. Specifically identify any professionals with whom you have entered into consulting agreements if they also have authored any articles you are furnishing as supplemental support.**

We have revised the disclosure, here and in the Business section, to state briefly the following statements:

- Its system is "safe, rapid and reliable," and that surgeons have used the AtriCure bipolar ablation system "to safely, rapidly and reliably" create transmural lesions;

- Its system “reduces the risk of blood clots, strokes and damage to adjacent anatomical structures;” and
- “Leading cardiothoracic surgeons have widely adopted” its system as a “standard treatment alternative” for atrial fibrillation. Please note that we have revised this language to remove the term “widely” from the disclosure.

Please refer to **Exhibit A** for support for these findings. We note that Ralph J. Damiano, Jr., MD, Richard P. Schuessler, PhD, A. Marc Gillinov, MD, and Patrick M. McCarthy, MD are the professionals with whom AtriCure has entered into consulting agreements who also have authored articles that we are furnishing as supplemental support. We also note that Delos M. Cosgrove III, MD, a former member of AtriCure’s board of directors, and Sydney L. Gaynor, MD, AtriCure’s current director of clinical affairs, have authored articles that we are furnishing as supplemental support.

**8. We note your statement here and on page 40 that you believe “the AtriCure bipolar ablation system is currently a market leader in the treatment of AF during open-heart surgical procedures.” Provide supplemental independent support for this statement of leadership position. Please mark the section or sections of the supplemental materials that supports your statement.**

Please refer to **Exhibit B** for supplemental independent support for AtriCure’s belief that “the AtriCure bipolar ablation system is currently a market leader in the treatment of AF during open-heart surgical procedures.”

Our Solution – Page 2

**9. Please balance the discussion of your “solution” with a discussion of the principal challenges or risks facing the company, such as the fact that you have not yet received FDA approval of your product to treat the market you have targeted and the consequences of the lack of FDA approval.**

We have balanced the discussion of Our Solution with a discussion of the fact that AtriCure has not yet received FDA approval of its product to treat the market it has targeted. We have noted that the AtriCure bipolar ablation system may not receive FDA approval and that the lack of FDA approval may prevent sales of its bipolar ablation system, which would cause AtriCure to lose all or substantially all of its revenues and would require significant financing to conduct necessary clinical trials and sustain its operations until sales could resume.

**10. Reconcile the disclosure in the first bullet with the disclosure on page 9, which indicates that you have not begun clinical trials to treat AF as a sole-therapy minimally invasive procedure yet.**

AtriCure has not yet received approval from the FDA to begin clinical trials for use of the AtriCure bipolar ablation system as a sole-therapy minimally invasive procedure. However, there have been preliminary clinical studies conducted by independent third parties at leading cardiac care centers. We have clarified the disclosure throughout Amendment No. 1 to indicate that these clinical trials were conducted by independent third parties and not by or on behalf of AtriCure.

**11. We note the disclosure at the bottom of page 9, which indicates that "we may not make claims about the safety or effectiveness of the AtriCure bipolar ablation system for the ablation of cardiac tissue or the treatment of AF...." Reconcile that prohibition with the bullets under this caption.**

We have revised the disclosure in the bullet points to clarify that AtriCure is reporting the results of independent third party studies and not independently making claims about the safety or effectiveness of the AtriCure bipolar ablation system for the ablation of cardiac tissue or the treatment of AF.

Recent Events – Page 3 (now page 3 "Summary-Acquisition of Enable Medical Corporation")

**12. Here and in the Business section, under a revised heading that more accurately describes the concurrent acquisition of related party Enable Medical Corporation, please expand to discuss briefly the material terms of the acquisition agreement and the reason you are acquiring Enable *at this time*. For instance, we note your disclosure that one reason for the acquisition is to provide you with "better control over research, development, and manufacturing activities," although the companies appear to be currently under common control. Disclose how the purchase price was determined, and quantify how much will be paid to affiliates of AtriCure. Briefly describe the extent of the affiliation between Enable and AtriCure and AtriCure's officers and directors. Finally, please file the agreement as an exhibit to the registration statement.**

We have, here and in the Business section, under a revised heading entitled "Acquisition of Enable Medical Corporation," expanded the disclosure to discuss the material terms of the acquisition agreement and the reason AtriCure is acquiring Enable Medical Corporation ("Enable") at this time. We have also disclosed how the purchase price was determined, and noted that affiliates of AtriCure will receive a majority of the proceeds from the acquisition of Enable. We have also described the extent of the affiliation between Enable and AtriCure and AtriCure's officers and directors. We have filed the agreement as an exhibit to the registration statement.

The Offering – Page 4 (now page 5)

**13. Please revise to quantify the portion of the proceeds of the offering to be used for each purpose indicated.**

We have revised the disclosure to quantify the portion of the proceeds of the offering to be used for each purpose indicated.

**14. Please revise to indicate that Enable is a related party, and briefly explain the basis of the affiliation between Enable and AtriCure.**

We have revised the disclosure to indicate that Enable is a related party with which we have a director, shareholders and an officer in common.

**15. We note your disclosure on pages 38 and F-14 that upon completion of this offering, you must repay the amount you borrowed under the terms of a credit facility that you entered into on March 8, 2005 with Lighthouse Capital Partners, and that you will additionally pay a fee of 15% of the aggregate amount borrowed under the credit line. Please revise here and on page 38 to quantify the dollar amount outstanding under this credit facility, the dollar amount of the 15% fee, and clarify whether you intend to use proceeds from the offering to pay these amounts.**

We have revised the disclosure here and on pages 5, 31 and 43 to indicate that as of May 31, 2005, AtriCure does not have any amounts outstanding under this credit facility. We have also revised the disclosure concerning loan repayment terms, including the fee due at maturity on September 1, 2009 equal to 15% of the aggregate amount borrowed under the credit facility. We also state that AtriCure may use proceeds from this offering to pay for amounts that would be outstanding in the event that AtriCure borrowed amounts under this facility.

Risk Factors – Page 7 (now page 9)

Risks Relating to Our Business – Page 7 (now page 9)

**16. Many of your risk factors describe multiple risks. For instance, under one risk factor caption regarding the impact of failure to comply with FDA regulations on pages 15-17, you discuss multiple risks, such as risks resulting from improper product promotion, noncompliance with ongoing QSR regulations, and the potential negative impact of adverse event reporting. Please revise throughout this section to provide individual risk factor disclosure under captions that more specifically describe each particular risk facing the company.**

We have revised throughout this section to provide individual risk factor disclosure under captions that more specifically describe each particular risk facing the Company. For

example, we have added the following captions: “Unless we are able to complete the clinical trials required to support future submissions to the FDA . . ..” on page 11; “Our current inability to educate or train doctors . . .” on page 13; “An inability to forecast future revenues or estimated life cycles of products . . .” on page 19; and “If we or our third party vendors fail to comply with extensive FDA regulations . . .” on page 19.

**17. Under a separate risk factor caption, disclose the risks regarding the fact that medical malpractice carriers are raising premiums or withdrawing coverage for doctors to perform procedures using off-label devices such as your system, as noted on page 12.**

On page 16, we have included a separate risk factor regarding the fact that medical malpractice carriers are raising premiums or withdrawing coverage for doctors to perform procedures using off-label devices, such as the AtriCure bipolar ablation system. This risk factor may be found under the following caption: “The increase in cost of medical malpractice premiums to doctors and hospitals or the lack of malpractice insurance coverage due to the use of our system by doctors for an off-label indication may cause certain doctors or hospitals to decide not to use our system and may damage our ability to grow and maintain the market for our system.”

Risks Relating to the Offering – Page 22 (now page 26)

**18. Please add a risk factor discussing the risks to investors associated with the fact that in excess of 10% of the anticipated gross proceeds of the offering will be used to acquire the business of a related party.**

On page 29, we have added a risk factor discussing the risks to investors associated with the fact that in excess of 10% of the anticipated gross proceeds of the offering will be used to acquire Enable, a related party. This risk factor may be found under the following caption: “We expect to use more than 10% of the net proceeds from this offering to acquire Enable, a related party, which acquisition could involve terms that are less favorable than an acquisition of an unrelated party.”

Use of Proceeds – Page 28 (now page 31)

**19. Given the timing of the termination provision of the credit facility with Lighthouse Capital Partners, it appears that a portion of the offering proceeds will be used to repay the amounts borrowed and the fee due at maturity. Revise to quantify these amounts and provide the disclosures required by Instruction 4 to Item 504 of Regulation S-K.**

We have revised the disclosure to indicate that as of May 31, 2005, there are no amounts outstanding under the facility and provided the disclosures required by Instruction 4 to Item 504 of Regulation S-K. We have stated that our ability to draw down amounts

under this facility ends on the earlier of September 1, 2005 and the closing of the offering and that any amounts drawn down under this facility will mature on September 15, 2009.

**20. Please revise to provide the disclosure required by Instruction 6 to Item 504 of Regulation S-K concerning the acquisition of Enable. Also quantify the amount of proceeds affiliates will receive as a result of the Enable acquisition.**

We have revised to provide the disclosure required by Instruction 6 to Item 504 of Regulation S-K concerning the acquisition of Enable and disclosed the fact that affiliates of AtriCure will receive a majority of the proceeds from the sale of Enable.

Capitalization – Page 29 (now page 32)

**21. Revise to remove the caption relating to cash and cash equivalents from your presentation of capitalization.**

We have removed the cash and cash equivalents disclosure from the presentation of capitalization.

Management's Discussion and Analysis – Page 34 (now page 37)

Results of Operations – Page 36 (now page 39)

**22. Please revise to quantify the increase in volume of units sold and to clarify whether price increases contributed to the increase in revenue from the prior period. Please expand to discuss and quantify each factor that contributed to the significant increase each period, including the impact from the addition of new products. Your discussion of cost of revenues should also provide quantitative details as to the increase in product shipments and clarify why the items discussed resulted in an increase to cost of revenues compared to prior year while cost of revenues as a percentage of total revenues remained the same for both years.**

We have revised the revenue disclosures to include quantitative details on price/volume, and the significant factors contributing to the increase in each period. In addition, we have also revised our discussion on cost of revenues to provide the reader with a better understanding of the movements in cost of revenues as it relates to revenues as well as the quantitative details of units shipped.

**23. In addition, expand your discussion of expenses to discuss and quantify each significant factor that contributed to the significant variances each period.**

We have revised our discussion of expenses to better describe the significant factors contributing to the variances between periods.

**24. Revise your discussion of research and development expense to also address the status of specific R&D projects or groups of related projects and any uncertainties associated with completing the projects. Also, revise to disclose whether historical R&D costs are indicative of future expenses.**

We have revised the disclosure to discuss the various research and development projects AtriCure is currently working on. We have also revised the disclosure to inform the reader that we expect research and development costs to increase overall, but remain relatively flat as a percentage of revenues.

**25. We note your research and development expenses increased in 2004 as a result of the hiring of additional engineers, and that your selling, general and administrative expenses increased in 2003 due to the "rapid expansion" of your sales force. Please quantify the number of employees added and describe why additional employees were hired during each period discussed, particularly with respect to the additional salespeople considering your disclosure on page 7 that you do not believe doctors are using your system for any purpose other than the surgical treatment of atrial fibrillation, although you currently do not have the requisite FDA approval to market your product for the treatment of atrial fibrillation.**

We have enhanced the disclosure to more fully describe why additional employees were hired during each period discussed.

Liquidity and Capital Resources – Page 37 (now page 42)

**26. Please revise to discuss the nature of the non-cash preferred stock interest expense in your description of the differences between net loss and cash used in operations. In addition, please revise to more fully discuss your business' sources and uses of cash and capital expenditures. That analysis should focus on the drivers of your cash flows and should not be a recitation of the line items in your cash flow statement.**

We have revised the disclosures to reflect the effect of the non-cash preferred stock interest expense and provided a more detailed disclosure of the drivers of cash flows.

**27. Please revise to clarify whether the $500,000 non-refundable payment to Enable in January 2005 is considered a down payment of the purchase price or paid in addition to the stated purchase price of $6.5 million ($7 million if the closing of the offering occurs after July 1, 2005).**

We have modified the disclosure to clarify that the $500,000 payment to Enable was made as an advance towards the purchase price of $6.5 million or $7.0 million.

**28. Please file the credit agreement with Lighthouse Capital Partners as a material contract exhibit to the registration statement. Refer to Item 601(b)(10)(i) of Regulation S-K.**

We have filed the credit agreement with Lighthouse Capital Partners V, L.P. as an exhibit to the registration statement.

**29. Please expand the discussion of critical accounting estimates to more fully describe subjective judgments and uncertainties and significant estimates associated with its application. While the notes to financial statements should present the basic accounting policies, critical accounting policy disclosure should address the nature and extent of subjective judgments and uncertainties involved in applying a principle at a given time or the variability that is reasonably likely to result from its application over time. For example, the stock based compensation should be included as a critical accounting policy since it appears from your disclosures that there is significant judgment in your accounting for stock based compensation. Refer to FR-60 and FR 72.**

We have revised the disclosure to describe critical accounting policies, including a disclosure on stock based compensation and our deferred tax asset valuation allowance. In addition, we have expanded disclosure of certain other policies.

Business – Page 40 (now page 46)

**30. Please expand your disclosure to discuss the development of your business as required by Item 101(a)(l) of Regulation S-K. In particular, describe the spin-off transaction in 2000 and explain the business purpose for the transaction.**

We have expanded the disclosure to discuss the development of the business as required by Item 101(a)(l) of Regulation S-K, including the spin-off transaction in 2000 and the business purpose for the spin-off.

**31. Please provide the disclosure of the material effects of environmental regulations on your business pursuant to Item 101(c)(l)(xii) of Regulation S-K. In this regard, we note your disclosure on page 22.**

We have included disclosure regarding the effects of environmental regulations in the manufacturing section of the Business section on page 66.

**32. In an appropriate location in the filing, provide more detailed information about consultants and compensation paid to them.**

We have added more detailed information about consultants and compensation paid to them in the consulting relationships section of the Business section on page 66.

Clinical Trials – Page 45 (now page 53)

**33. Revise to explain what IDE approval from the FDA is, and clarify here and on page 51 whether you will need to obtain an IDE prior to each clinical trial you will conduct. If so, provide an estimate of how long the approval process could take for each IDE.**

We have revised to explain what IDE approval from the FDA is, and clarified here and on page 58 that AtriCure will need to obtain an IDE prior to each clinical trial it will conduct. We have also provided an estimate of how long the approval process could take for each IDE.

Intellectual Property – Page 55 (now page 63)

**34. Please revise to state the duration of your patents.**

We have revised to state the duration of these patents.

Manufacturing – Page 56 (now page 64)

**35. Please revise to discuss briefly the material terms of your agreement with the supplier of your ablation sensing unit, including any significant obligations or commitments of the parties, duration, termination provisions, and any intellectual property indemnification provisions. Also identify the supplier.**

We have revised to discuss briefly the material terms of AtriCure's agreement with Stellartech Research Corporation, the supplier of AtriCure's ablation sensing unit.

Management – Page 58 (now page 68)

**36. We note your disclosure on page 61 that there are existing voting agreements among the holders of your common stock, Series A preferred stock, and Series B preferred stock. Please revise to briefly discuss the terms of the agreements, and file them as exhibits to the registration statement. Refer to Item 601(b)(9) of Regulation S-K.**

We have included a brief discussion of the voting agreement in Certain Relationships and Related Party Transactions (and included a cross-reference in Management) and filed it as an exhibit to the registration statement.

Principal Stockholders – Page 68 (now page 78 "Principal and Selling Shareholders")

**37. Please revise to identify the natural persons who have or share voting and/or investment control of the shares held by the entities identified in the table.**

We have revised to identify the natural persons who have or share voting and/or investment control of the shares held by the entities identified in the table, with the exception of U.S. Venture Partners. We will include those natural persons who have or share voting and/or investment control of the shares held by U.S. Venture Partners by further amendment.

Certain Relationships and Related Party Transactions – Page 70 (now page 81)

Enable – Page 72 (now page 83)

**38. Please revise to discuss in greater detail the material terms of the acquisition agreement and provide the disclosures required by Instruction 5 to Item 404(a) of Regulation S-K.**

We have provided additional disclosure and cross-referenced the discussion in the business section of the material terms of the acquisition agreement.

**39. Please expand your disclosure to discuss the material terms of the current manufacturing and supply agreement with Enable, including any significant obligations or commitments of the parties, duration, termination provisions, and any intellectual property indemnification provisions. Please file this agreement as an exhibit to the registration statement pursuant to Item 601(b)(10)(i) of Regulation S-K.**

We have expanded the disclosure to discuss the material terms of the current master development, manufacturing and supply agreement with Enable and filed this agreement as an exhibit to the registration statement.

Shares Eligible for Future Sale – Page 80 (now page 92)

**40. Please disclose the number of holders of your common stock as required by Item 201(b) of Regulation S-K.**

We have disclosed the number of holders of AtriCure's common stock, as required by Item 201(b) of Regulation S-K.

Underwriting – Page 82 (now page 94)

**41. We note your disclosure that in connection with the offering, certain underwriters or dealers may distribute prospectuses electronically. Please describe supplementally the procedures for the electronic offer, sale and distribution of the shares and identify the underwriters who may engage in such a distribution. If you become aware of any additional members of the underwriting syndicate that may engage in electronic offers, sales or distributions after you respond to this comment, promptly supplement your response to identify those members and provide us with a description of their procedures.**

**Also, in your discussion of the procedures, tell us how your procedures ensure that the distribution complies with Section 5 of the Securities Act. In particular:**

- **the communications used;**
- **the availability of the preliminary prospectus;**
- **the manner of conducting the distribution and sale, like the use of indications of interest or conditional offers; and**
- **the funding of an account and payment of the purchase price.**

**Finally, tell us whether you or the underwriters have any arrangements with a third party to host or access your preliminary prospectus on the internet. If so, identify the party and the website, describe the material terms of your agreement and provide us with a copy of any written agreement. Provide us also with copies of all information concerning your company or prospectus that has appeared on their website. Again, if you subsequently enter into any arrangements like this, promptly supplement your response.**

**We may have further comment.**

UBS Securities LLC and Thomas Weisel Partners LLC have informed AtriCure that they may engage in electronic offers or distributions, as described herein. Piper Jaffray & Co. and A.G. Edwards & Sons, Inc. have informed AtriCure that they will not engage in electronic offers, sales or distributions.

As a courtesy to certain of their customers to whom a preliminary prospectus will be sent, UBS Securities LLC and UBS Financial Services Inc., a selected dealer affiliated with UBS Securities LLC (together, "UBS"), may distribute preliminary prospectuses electronically to certain of their customers. To the extent distributed electronically, the preliminary prospectus will be in Adobe PDF format. No preliminary prospectus will be sent until a preliminary prospectus meeting the requirements of the Securities Act of 1933 has been prepared and filed with the Commission. UBS will not accept indications of interest, offers to purchase or confirm sales electronically except for the indications of interest accepted by UBS through its "New Issues" system (formerly known as DealKey (SM)) and described in the next paragraph).

UBS Securities LLC intends to make the preliminary prospectus available to certain of its customers through "New Issues", a section of the UBS Investment Bank Client portal that is part of UBS Securities LLC's web-based client services site. UBS Securities LLC will accept indications of interest from those certain customers through "New Issues" but will not accept offers to purchase or confirm sales through any of its websites in connection with the offering. The "New Issues" section is separate from UBS Securities LLC's

publicly available website as access to “New Issues” is password-protected. UBS Securities LLC customers may obtain password access to “New Issues” upon request. UBS Securities LLC currently limits access to “New Issues” in the United States to institutional customers that are “qualified institutional buyers” under Rule 144A. “New Issues” contains a listing of equity and equity-linked offerings, with each offering hyperlinked to an offering summary page. The offering summary page will contain only Rule 134 information pertaining to the offering, a hyperlink to the preliminary prospectus and other non-offering related information (such as administrative or logistical information). In some cases, the offering summary page will also contain a link to the offering road show as discussed below. The preliminary prospectus will be in Adobe PDF format, and a link will be available on the page to download the required viewer. The Company has been informed by UBS Securities LLC that Ms. Kristina Schillinger, Esq. of the Securities and Exchange Commission has previously reviewed UBS Securities LLC’s electronic offering procedures without objection in the spring of 2001. UBS Securities LLC continues to employ the same procedures as those reviewed by Ms. Schillinger.

UBS Securities LLC has informed AtriCure that, in addition to distributing prospectuses electronically through “New Issues”, it may send preliminary prospectuses via email as a courtesy to certain of its customers to whom it is concurrently sending a prospectus in hard copy.

Thomas Weisel Partners LLC has informed AtriCure that it may send prospectuses via email as a courtesy to certain of its customers to whom it is concurrently sending a prospectus in hard copy. To the extent distributed electronically, the preliminary prospectus will be in Adobe PDF format. No preliminary prospectus will be sent until a preliminary prospectus meeting the requirements of the Securities Act of 1933 has been prepared and filed with the Commission. Thomas Weisel Partners LLC will not accept indications of interest, offers to purchase or confirm sales electronically.

AtriCure will not know the final composition of the underwriting syndicate until after the Registration Statement is declared effective. AtriCure will supplement this response if it learns that any additional members of the underwriting may engage in electronic offers, sales or distributions.

AtriCure understands that UBS Securities LLC plans to engage NetRoadshow, Inc. to host or access the preliminary prospectus on the Internet. The internet address of NetRoadshow, Inc. is “www.netroadshow.com”. UBS Securities LLC has entered into a Master Services Agreement with NetRoadshow, Inc., which is attached as **Exhibit C.** The only material that will appear on NetRoadshow, Inc.’s website in connection with the offering will be a copy of the preliminary prospectus and the road show. In accordance with the agreement, NetRoadshow, Inc. will make the road show available only to those investors who have been provided with a password from the underwriters. An investor who is given the password may access the road show during a one-day period and will

not be able to download, copy or print any portion of the road show transmission other than the preliminary prospectus. In the agreement, NetRoadshow, Inc. agrees to comply with its obligations under the terms of the response of the Office of Chief Counsel, Division of Corporate Finance, Securities and Exchange Commission, dated July 30, 1997, with respect to road show transmissions for registered offerings, as amended or updated by other no-action letters relating to Internet road shows.

Index to Financial Statements – Page F-1

**42. Revise your filing to include Schedule II – Valuation and Qualifying Accounts for Atricure, Inc. Your independent registered public accountant should audit this schedule. Refer to Article 12 of Regulation S-X.**

We have revised our filing to include Schedule II – Valuation and Qualifying Accounts, as required by Article 12 of Regulation S-X.

**43. Consideration should be given to the updating requirements of Rule 3-12 of Regulation S-X.**

The appropriate interim financial information has been inserted into the registration statement in accordance with the requirements of Regulation S-X, Rule 3-12.

Consolidated Financial Statements of AtriCure, Inc. for the year ended December 31, 2004

Report of Independent Registered Public Accounting Firm – Page F-2

**44. We note your "draft" report for the effect of a reverse stock split of your stock, which will become effective at the closing of the offering. Prior to going effective the audit report should be signed and the draft language should be removed.**

AtriCure confirms that, prior to going effective, the audit report will be signed and the draft language will be removed.

Statements of Shareholders' Deficit – Page F-5

**45. Please revise to disclose changes in the number of shares outstanding for each period for which changes in retained earnings are reported. It is acceptable to disclose only the changes for the most recent annual period.**

The Statement of Shareholders' Deficit has been revised to reflect the number of shares outstanding for all periods presented.

Note 1. Summary of Significant Accounting Policies – Page F-7

Nature of Business

**46. Provide more details of the accounting for the spin-off transaction, including the basis for recording the assets and liabilities after the spin-off and the amount of common ownership between the entities after the transaction.**

We have provided details of the accounting for the spin-off transaction, including the basis for recording the assets and liabilities after the spin-off and the amount of common ownership between the entities after the transaction.

Revenue Recognition

**47. Tell us why shipment is the appropriate point for product sales revenue. Supplementally describe the terms and conditions of product sales in sufficient detail to support that your practice is appropriate under SAB 104 and EITF 00-21. Please revise to address the nature and extent of any post shipment obligations, rights of return, sales incentives and customer acceptance provisions, including discussion of how these impact your revenue recognition practices. In addition, address return policies and payment terms for both end-users and distributors.**

AtriCure sells its medical device products through a direct and indirect sales force. Pursuant to AtriCure's standard sales terms, revenue is recognized when title to the goods and risk of loss transfer to customers and there are no remaining obligations that will affect the customer's final acceptance of the sale. AtriCure's standard sales terms, as illustrated on AtriCure's invoices, define the transfer of title and risk of loss to occur upon shipment to the respective customer (i.e., FOB Shipping Point).

AtriCure maintains no post-shipping obligations to the recipients of the respective equipment. No installation, calibration or testing of this equipment is performed by AtriCure subsequent to shipment to the customer in order to render it operational. Installation is rudimentary as the recipient (the customer) of the equipment completes the process using the information in the operating manual provided by AtriCure. AtriCure personnel are not required to be present at the customer's location for use of the equipment. The equipment is essentially "plug and play."

AtriCure's typical practice is to not provide sales discounts. Sales incentives are extremely limited and not a common company practice.

AtriCure does not generally accept product returns unless the products are damaged in shipment. Sales terms are consistent for both end-users and distributors, with terms generally not exceeding 120 days.

Based on the above factors, AtriCure believes that it has met the criteria of SAB 101, SAB 104 and EITF-0021 and appropriately recognizes revenue upon shipment of the product.

Property and Equipment

**48. We see that you loan cryo-units and generators at no cost to medical providers who use your products. Tell us how you have considered whether this arrangement represents a separate unit of accounting under EITF 00-21. Tell us why a portion of revenue from the sale of the related products should not be deferred and recognized over the period the equipment is on loan. Please indicate the basis for the 3 year depreciation period. In addition, clarify whether this equipment is provided on a consignment basis, and if it subsequently sold to the customer. Details of the accounting treatment for this loaned equipment should be provided.**

AtriCure provides certain equipment (e.g., generators) to its customers free of charge for use with the related medical handpieces. The practice of loaning such equipment for use with AtriCure's product is a common industry practice. AtriCure retains title to the loaned equipment, which is depreciated over a three year period in accordance with AtriCure's standard depreciation policy associated with such property. AtriCure estimates that the useful life of the generator, which is programmed with software to regulate power to the handpieces connected to the generator, will be approximately three years. Related depreciation expense is recorded in cost of revenues.

Prior to shipment of the equipment to the customer, AtriCure requires the customer to sign a consent acknowledging that the equipment is on loan and that damage to the equipment is the customer's responsibility while on loan. The customer retains the loaned equipment for an indefinite period of time, subject to the customer's continued use of AtriCure's related medical handpieces.

Deferral of revenues is not considered appropriate as the customer is not required to purchase a fixed quantity of handpieces in order to retain the loaned equipment nor is it reasonably possible to quantify the related sales volume over the expected retention period of the equipment. If use of AtriCure's handpieces is discontinued (by determination of the customer or by AtriCure), AtriCure makes arrangements to retrieve the equipment by utilizing AtriCure's personnel for physical retrieval at the customer's location or by means of common carrier. AtriCure does not provide the generators on a consignment basis. Accordingly, AtriCure has concluded that this is not a multi-element sale under EITF 00-21.

Note 2. Stock Option Plan – Page F-9

**49. We see from page 66 that you may grant stock appreciation rights under your Equity Incentive Plan. Tell us whether you have granted any stock appreciation**

**rights and, if so, please revise your filing to disclose how you are accounting for the rights in your audited financial statements.**

The 2005 Equity Incentive Plan, which permits the grant of stock appreciation rights, is in the process of being approved. To date, AtriCure has not granted any stock appreciation rights.

**50. We are deferring any evaluation of stock compensation recognized until the estimated offering price is specified, and we may have further comments in that regard when you file the amendment containing that information.**

We have noted that the staff is deferring any evaluation of stock compensation recognized until specification of the estimated offering price.

**51. Please provide us with a schedule showing in chronological order, the date of grant, optionee, number of options granted, exercise price and the deemed fair value of the underlying shares of common stock for the options issued within the year preceding the contemplated IPO. Also, provide a similar schedule for issuances of common stock. Please indicate the compensation recorded for each of these issuances and reconcile to the amounts recorded in the financial statements. Tell us the objective evidence and analysis which supports your determination of the fair value at each grant and stock issuance date. Discuss the nature of any events which occurred between the dates the options were granted and the date the registration statement was filed. Relate your valuation methodology to the valuation methodology used to calculate your initial public offering price range. la addition, provide details of estimated pricing information from the underwriters and indicate whether this was considered in determining estimated fair value of the stock, options and warrants issued.**

Please refer to **Exhibit D** to this letter is a schedule providing the information requested by the staff for all stock option grants. The only issuances of common stock occurred at the formation of AtriCure and upon the exercise of stock options.

Prior to this year, each time AtriCure prepared to issue stock options, Norman R. Weldon, Ph.D., a Board member of AtriCure, prepared a valuation of AtriCure stock for review by the Board. As described in the “Management” section of the registration statement, Dr. Weldon holds a Ph.D. in Economics and has a substantial amount of experience as both a venture capitalist and as an executive officer and board member of several publicly held medical device companies. Dr. Weldon was actively involved in the valuation of stock options in his service as a director to publicly-held medical device companies.

Dr. Weldon developed a model to value AtriCure’s shares. The key element of the model is a price to projected revenue assumption. Dr. Weldon updated the model periodically

for both changes in AtriCure's projected revenue and the ratio of stock price to revenue for medical device companies which he tracked. The model also reduced the option valuation by a decreasing percentage ranging from 30% to 15% due to the illiquidity of the options in a private company with no assurances of a public market.

Over time, the value assigned to each option tranche increased, reflecting primarily the increases in the projected revenues of AtriCure.

In the fourth quarter of 2004, AtriCure received confirmation from investment bankers that, with its 2004 projected results and prospects for 2005, an Initial Public Offering was feasible. Based on the information provided by investment bankers, AtriCure calculated its value by applying a multiplier of 4.5 to the projected revenue of AtriCure and then applied an illiquidity discount of 20%. This methodology projected a value per share of $3.60 prior to the illiquidity discount at December 31, 2004 (and prior to the contemplated reverse stock split). AtriCure then recorded a charge to be taken over the vesting period for the difference between the fair value calculated under this methodology and the original fair value for all option grants in 2004.

AtriCure has not yet set an offering price range.

**52. For options granted during the twelve months prior to the date of the most recent balance sheet, please disclose the following in the notes to your financial statements:**

**a. For each grant date, the number of options granted, the exercise price, the fair value of your common stock, and the intrinsic value (if any) per option.**

**b. Whether the valuation was contemporaneous or retrospective.**

**c. If the valuation specialist was a related party, please disclose that fact.**

AtriCure believes that the financial statements as presented reflect the required disclosures.

**53. From your disclosure on page F-10, it appears as though your valuation was retrospective. We believe that the following disclosures would be helpful to an investor since changes in your methodologies and assumptions could have a material impact upon your financial statements. Please revise to provide the following disclosures in MD&A:**

**a. The aggregate intrinsic value of all outstanding options based on the midpoint of the estimated IPO price range,**

**b. Discuss the significant factors, assumptions and methodologies used in determining fair value for those options granted during the twelve months prior to the date of the most recent balance sheet.**

**c. Discuss each significant factor contributing to the difference between the fair value as of the date of grant and the estimated IPO price for options**

**granted during the twelve months prior to the date of the most recent balance sheet.**

**d. Disclose the valuation method used and the reasons why you choose that method.**

Once a price range has been established, we will expand our disclosures to reflect the midpoint of the price range.

**54. We see that you adjusted the fair value of your stock subsequent to the issuance of stock options during 2004. Please update the schedule on page F-10 to show the revised fair value of options issued.**

We have revised the disclosure to reflect the revised fair value of options issued.

Note 3. Convertible Debt – Page F-11

**55. Please revise to disclose the method used to determine the fair value of the warrants issued with the convertible debt and the beneficial conversion feature embedded in the convertible note.**

We have revised to disclose the method used to determine the fair value of the warrants issued with the convertible debt and the beneficial conversion feature embedded in the convertible note.

Note 4. Redeemable Preferred Stock – Page F-11 (now page F-12)

**56. We note that if the Series A or B Preferred stock is converted prior to redemption, no amount is due for the 15% rate. We also note that upon completion of the IPO, subject to certain terms, all preferred stock will convert to common stock. Revise to disclose how you will account for the amount accrued for the 15% rate if all preferred stock is converted to common stock upon completion of the IPO. Additionally, tell us why it is appropriate to accrue the 15% rate as interest expense.**

Pursuant to the guidance in EITF Topic D-98, AtriCure has assessed the probability that the company's preferred stock will become redeemable. Topic D-98 requires that the redemption amount of a redeemable security be accrued through the earliest redemption date of the security unless it is not probable that the preferred stock will become redeemable. In assessing this probability, AtriCure noted that both series of preferred stock become redeemable with the mere passage of time unless the company is ultimately successful in completing an IPO prior to the contractual redemption dates. Given the inherent uncertainty of a successful IPO, AtriCure has historically concluded that redemption of the preferred stock is probable. Accordingly, AtriCure has accrued the 15% return for all historical periods and intends to continue such accrual until redemption is no longer assessed as probable.

If the preferred stock is converted to common stock upon completion of the IPO, the carrying amount of the preferred stock upon such conversion event would be reclassified to common stock. There would be no gain or loss recognized, and the amounts previously accrued for the 15% rate would not be reversed. We have revised Note 4 to disclose this anticipated future accounting.

Note 6. Related Party – Page F-25 (now page F-34 "Note 5- Related Party")

**57. Please revise to disclose all significant transactions with related parties separately on the face of the financial statements. Refer to SFAS 57 and Rule 4-08(k) of Regulation S-X.**

We have disclosed all significant transactions with related parties on the face of the financial statements in compliance with SFAS 57 and Rule 4-08(k) of Regulation S-X.

Consolidated Financial Statements of Enable Medical Corporation, Inc. for the year ended December 31, 2004

Note 1. Summary of Significant Accounting Policies – Page F-20 (now page F-29)

Revenue Recognition

**58. Please revise to provide a more detailed analysis of your revenue recognition policy. Disclose why shipment is the appropriate point for product sales revenue. Specifically address the nature and extent of any post shipment obligations, rights of return and customer acceptance provisions, including discussion of how such obligations and provisions are considered in your practices. Regarding product development details, disclose the significant terms of your product development agreements and why you recognize revenue as contract costs are incurred. The accounting for these arrangements should be clearly disclosed.**

Pursuant to Enable's standard sales terms, revenue is recognized when title to the goods and risk of loss transfer to customers and there are no remaining obligations that will affect the customer's final acceptance of the sale. Enable's standard sales terms, as stated on Enable's invoices, define the transfer of title and risk of loss to occur upon shipment to the respective customer (i.e., FOB Shipping Point).

Enable maintains no post-shipping obligations to the recipients of the equipment. Enable does not accept product returns unless the products are damaged in shipment or deemed substandard by the customer's quality control department.

Enable maintains certain product development agreements, the most significant of which is with AtriCure. The agreement engages Enable to develop and manufacture certain

electrosurgical devices, and to utilize certain facilities, software and equipment. AtriCure was required to pay Enable a monthly fee of at least $96,000 for certain product development services from February 1, 2003 to January 31, 2004. After January 31, 2004 there is no specified monthly payment. The achievement of milestones is not required under the agreement, as revenue is earned by Enable's ongoing research and development activities.

In addition to the agreement with AtriCure, Enable maintains other, insignificant development agreements whereby revenue is earned as costs are incurred.

Note 2. Stock Option Plan – Page F-22 (now page F-31)

**59. Revise to disclose details of how the fair values for the options issued in fiscal 2004 were determined, including details of the specific assumptions, estimates and valuation methodologies used. Clarify the amount of compensation recorded related to these options and how this complies with SFAS 123.**

In August 2004, the Enable Board undertook to value its common stock as it had in 2003. The AtriCure part of Enable's business is essentially a contract manufacturing business that grew as a result of AtriCure's success. Revenues from AtriCure for 2004 were projected to be $6.2 million, a 51% increase from 2003. However, as with many contract manufacturing businesses, there was always the risk that the business could get shifted to another manufacturer or that AtriCure could bring manufacturing in house. The scissors piece of Enable's business was projected to generate revenue of $700,000 in 2004 and, accordingly, Enable was projected to have total revenue of approximately $6.9 million for 2004 and earnings were estimated to be just below $500,000. The Enable Board considered various valuation methodologies and concluded that a price to projected revenue method was most appropriate. Based on comparables, the Enable Board believed that a revenue multiplier of 0.8 to 1.0 was appropriate for a contract manufacturing type of business. This implied a total company valuation of $5.5-$6.9 million. However, as Enable was not publicly traded, a significant liquidity discount was warranted. A 25% illiquidity discount was used which implied a value of about $4.1-$5.2 million. The Enable Board chose the mid point of approximately $4.65 million, which resulted in a price of $0.60 per share.

Enable re-examined its valuation methodology as of December 31, 2004 in connection with the possible initial public offering by AtriCure. The difference between the fair value used for 2004 option grants and the fair value based on updated revenue projections was immaterial and no stock compensation expense was booked.

Note 5. Related Party – Page F-25 (now page F-34)

**60. Please revise to disclose all significant transactions with related parties separately on the face of the financial statements. Refer to SFAS 57 and Rule 4-08(k) of Regulation S-X.**

We have disclosed all significant transactions with related parties on the face of the financial statements in compliance with SFAS 57 and Rule 4-08(k) of Regulation S-X.

Unaudited Pro Forma Combined Financial Information as of and for the year ended December 31, 2004

General

**61. We note the discussion on page 27 that you expect to use $6 million of the net proceeds of this offering to acquire Enable. Please reconcile this with the $6.5 to $7 million disclosed on page F-25.**

We have revised the disclosure on Footnote 8 to clarify that only the remaining $6.0 million to $6.5 million of the total purchase price will come from the proceeds of this offering.

Note 2. Pro Forma Adjustments to the Unaudited Combined Balance Sheet – Page F-30 (now page F-48 "Adjustments to the Unaudited Pro Forma Condensed Combined Balance Sheet")

**62. Tell us how you considered EITF 04-1 in considering whether there is a preexisting relationship between AtriCure and Enable that should be accounted for as a multiple-element transaction and measured and accounted for in purchase accounting. We note from page 72 that you have a master manufacturing and supply agreement with Enable.**

AtriCure considered EITF 04-1 in its analysis of the business combination of Enable in the preparation of the pro forma entries. As noted in Comment 58, Enable maintains certain product development agreements, the most significant of which is with AtriCure. The agreement, as amended, expires on December 31, 2005 and engages Enable to develop and manufacture electrosurgical devices, and to utilize certain facilities, software and equipment. AtriCure was required to pay Enable a monthly fee of at least $96,000 for certain product development services from February 1, 2003 to January 31, 2004. After January 31, 2004 there is no specified monthly payment. The achievement of milestones is not required under the agreement, as revenue is earned by Enable's ongoing research and development activities. AtriCure believes that its contract with Enable represents current market value, especially given its short duration. Further, there are no stated settlement provisions in the contract. Accordingly, AtriCure does not believe that there is any value to be allocated to the preexisting relationship.

AtriCure will add disclosures to the Pro Forma Financial Statements summarizing its conclusions with respect to its analysis of EITF 04-1.

**63. Revise to provide details of the purchase price allocation that includes the purchase price, the estimated fair value of the assets and liabilities acquired and the allocation to identifiable intangible assets and goodwill. You should clearly identify the fair value adjustments to net tangible assets and liabilities acquired and indicate how you determined the value allocated to identifiable intangible assets. In addition, describe the factors that contributed to a purchase price resulting in the recognition of significant amounts of goodwill.**

We have provided the requested disclosure regarding the purchase price allocation.

**64. If your purchase price allocation is preliminary, please disclose that fact and discuss why the allocation is preliminary, what events or activities must occur for it to be final, when management expects it to be finalized and the potential impact on the financial statements of any reallocation.**

We have provided the requested disclosure regarding the preliminary nature of the purchase price allocation.

Note 3. Pro Forma Adjustments to the Unaudited Combined Statements of Operations – Page F-31 (now page F-49 "Adjustments to the Unaudited Pro Forma Condensed Combined Statements of Operations")

**65. Revise to clearly disclose why you are eliminating an equal amount of product sales revenue and product sales cost of revenue for purchases between Enable and AtriCure. Clarify whether there was any margin on these sales. In addition, indicate the nature of the $1.1 million offsetting adjustments in Notes (b) and (c) on page F-29.**

We have provided the requested disclosure regarding the elimination of product sales revenue and product sales cost of revenues. In addition, we indicated the nature of the $1.1 million offsetting adjustments in Notes (b) and (c).

Part II Exhibits – Page II-3

**66. We note your intention to file some exhibits, including your legal opinion, by amendment. Because we may have comments on these exhibits, please file the exhibits allowing adequate time for their review.**

We have filed the following as additional exhibits: Exhibit 1.1, Form of Underwriting Agreement; Exhibit 2.1, Agreement and Plan of Merger, dated as of February 14, 2005, between AtriCure, Inc. and Enable Medical Corporation; Exhibit 3.1, Certificate of Incorporation, filed October 31, 2000; Exhibit 3.1.1, Certificate of Amendment, filed May 24, 2001; Exhibit 3.1.2, Certificate of Amendment, filed November 29, 2001; Exhibit 3.1.3, Certificate of Amendment, filed June 6, 2002; Exhibit 3.3, Amended and Restated Bylaws; Exhibit 4.1, Amended and Restated Investors' Rights Agreement, dated June 6, 2002, between AtriCure, Inc. and each of the signatory Investors; Exhibit 4.1.1, Amendment No. 1 to Amended and Restated Investors' Rights Agreement, dated March 8, 2005, between AtriCure, Inc. and each of the signatory Investors; Exhibit 4.2, Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of June 6, 2002, by and among AtriCure, Inc., certain Series A shareholders, certain Series B shareholders, and certain common shareholders; Exhibit 4.3, Amended and Restated Voting Agreement, dated as of June 6, 2002, by and among AtriCure, Inc., certain common shareholders, certain Series A shareholders, and certain Series B shareholders; Exhibit 4.5, Specimen of warrant certificate issued to Series B preferred shareholders; Exhibit 4.6, Specimen of warrant certificate issued to Lighthouse Capital Partners V, L.P.; Exhibit 10.1, 2001 Stock Option Plan; Exhibit 10.6, Lease Agreement, dated as of December 18, 2000, between AtriCure, Inc. and Allen Road Properties Limited Liability Company; Exhibit 10.6.1, Agreement to Improve Lease Premises, First Amendment to Lease Dated December 18, 2000, dated as of May 28, 2002, between AtriCure, Inc. and Allen Road Properties Limited Liability Company; Exhibit 10.6.2, Agreement to Expand Leased Premises and Extend Lease, Second Amendment to Lease Dated December 18, 2000, dated as of April 8, 2004, between AtriCure, Inc. and Allen Road Properties Limited Liability Company; and Exhibit 10.7, Loan and Security Agreement No. 4631, dated as of March 8, 2005, by and between Lighthouse Capital Partners V, L.P. and AtriCure, Inc.

Exhibit 23.1 and 23.2

**67. Please include an updated and signed consent from your independent auditors with any amendment filed.**

We have included an updated and signed consent from AtriCure's independent auditors with this amendment to the registration statement.

Kindly contact the undersigned at (212) 351-4522 once you have had an opportunity to review this letter.

Very truly yours,

/s/ Theodore L. Polin
Theodore L. Polin

Encls.