

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2009

or

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

For the transition period from _____ to _____.

Commission File Number 001-33092

LEMAITRE VASCULAR, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

63 Second Avenue, Burlington, Massachusetts

(Address of principal executive offices)

04-2825458

(I.R.S. Employer Identification No.)

01803

(Zip Code)

Registrant's telephone number, including area code 781-221-2266

Securities registered under Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	The NASDAQ Stock Market LLC

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes: No:

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes: No:

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer (Do not check if a small reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes: No:

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant, based on the last sale price for such stock on June 30, 2009: \$25,917,009. The number of shares held by stockholders whose ownership exceeds 5% of the registrant's common stock outstanding at June 30, 2009 is based on Schedules 13D and 13G filed by such stockholders for the year ended December 31, 2008 and subsequent reports, if any, filed by such stockholders pursuant to Section 16 of the Securities Exchange Act of 1934, as amended. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant. At March 25, 2010, the registrant had 15,644,614 shares of common stock, par value \$0.01 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Form 10-K incorporates information by reference from the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year covered by this annual report.

[Table of Contents](#)

LEMAITRE VASCULAR
2009 FORM 10-K ANNUAL REPORT
TABLE OF CONTENTS

[PART I](#)

Item 1.	Business	2
Item 1A.	Risk Factors	21
Item 1B.	Unresolved Staff Comments	42
Item 2.	Properties	43
Item 3.	Legal Proceedings	43
Item 4.	Removed and Reserved	43

[PART II](#)

Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	44
Item 6.	Selected Financial Data	47
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	48
Item 7A.	Quantitative and Qualitative Disclosure About Market Risk	65
Item 8.	Financial Statements and Supplementary Data	65
Item 9.	Changes In and Disagreements With Accountants on Accounting and Financial Disclosure	65
Item 9A.	Controls and Procedures	65
Item 9B.	Other Information	67

[PART III](#)

Item 10.	Directors, Executive Officers and Corporate Governance	68
Item 11.	Executive Compensation	68
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	68
Item 13.	Certain Relationships and Related Transactions, and Director Independence	69
Item 14.	Principal Accountant Fees and Services	69

[PART IV](#)

Item 15.	Exhibits and Financial Statements Schedules	70
----------	---	----

[SIGNATURES](#)

73

PART I
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements (within the meaning of the federal securities law) that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this Annual Report on Form 10-K regarding our strategy, future operations, future financial position, future net sales, projected costs, projected expenses, prospects and plans and objectives of management are forward-looking statements. The words “anticipates,” “believes,” “estimates,” “expects,” “intends,” “may,” “plans,” “projects,” “will,” “would,” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We have based these forward-looking statements on our current expectations and projections about future events. Although we believe that the expectations underlying any of our forward-looking statements are reasonable, these expectations may prove to be incorrect, and all of these statements are subject to risks and uncertainties. Should one or more of these risks and uncertainties materialize, or should underlying assumptions, projections, or expectations prove incorrect, actual results, performance, or financial condition may vary materially and adversely from those anticipated, estimated, or expected. We have identified below some important factors that could cause our forward-looking statements to differ materially from actual results, performance, or financial conditions:

- the unpredictability of our quarterly net sales and results of operations;
- our ability to keep pace with a rapidly evolving marketplace and to develop or acquire and then successfully market new and enhanced products;
- our ability to successfully identify, acquire, and integrate new products, businesses, and technologies and realize expected benefits;
- a highly competitive market for medical devices;
- the effect of a disaster at any of our manufacturing facilities;
- the loss of any significant suppliers, especially sole-source suppliers;
- the loss of any distributor or any significant customer, especially in regard to any product that has a limited distributor or customer base;
- our ability to adequately grow our operations and attain sufficient operating scale;
- our ability to obtain adequate profit margins;
- our ability to effectively protect our intellectual property and not infringe on the intellectual property of others;
- possible product liability lawsuits and product recalls;
- inadequate levels of third-party reimbursement to healthcare providers;
- our ability to initiate, complete, or achieve favorable results from clinical studies of our products;
- our ability to obtain and maintain U.S. and foreign regulatory clearance for our products and our manufacturing operations;
- our ability to raise sufficient capital when necessary or at satisfactory valuations;
- loss of key personnel; and
- other factors discussed elsewhere in this Annual Report on Form 10-K.

We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. We have included important factors in the cautionary statements included in this Annual Report on Form 10-K, particularly in the section entitled “Risk Factors,” that we believe could cause actual results or events to differ materially from the

[Table of Contents](#)

forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments we may make. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events, or otherwise, except as required by law.

The following discussion should be read in conjunction with our financial statements and the related notes contained elsewhere in this Annual Report on Form 10-K and in our other Securities and Exchange Commission filings.

Unless the context requires otherwise, references to “LeMaitre Vascular,” “we,” “our,” and “us” in this Annual Report on Form 10-K refer to LeMaitre Vascular, Inc. and its subsidiaries.

LeMaitre, AlboGraft, AnastoClip, EndoRE, Expandable LeMaitre Valvulotome, Flexcel, Glow ‘N Tell, Grice, Inahara-Pruitt, InvisiGrip, LeverEdge, MollRing Cutter, NovaSil, OptiLock, Pruitt, Pruitt-Inahara, Reddick, TAArget, TT, UniFit, VascaTape, and the LeMaitre Vascular logo are registered trademarks of LeMaitre Vascular, and AlboSure, AnastoClip GC, Biomateriali, Pruitt F3, UnBalloon and XenoSure are unregistered trademarks of LeMaitre Vascular. This Annual Report on Form 10-K also includes the registered and unregistered trademarks of other persons.

Item 1. Business

Overview

LeMaitre Vascular is a global provider of medical devices and implants for the treatment of peripheral vascular disease. We develop, manufacture, and market vascular devices to address the needs of vascular surgeons. Our diversified portfolio of peripheral vascular devices consists of brand name products that are used in arteries and veins outside of the heart and are well known to vascular surgeons, including the Expandable LeMaitre Valvulotome, the Pruitt-Inahara Carotid Shunt, and VascaTape Radiopaque Tape.

We have grown our business by using a three-pronged strategy: building a worldwide direct sales force, acquiring and developing complementary vascular devices, and developing and enhancing our in-house manufacturing competencies. Since 1998 we have completed ten acquisitions and consolidated most of our manufacturing operations into our Burlington, Massachusetts, headquarters.

We estimate that peripheral vascular disease affects more than 20 million people worldwide. We estimate that the annual worldwide market for all peripheral vascular devices is approximately \$3 billion and that the annual worldwide market addressed by our 15 product lines approaches \$1 billion. The increasing incidence and diagnosis of peripheral vascular disease is driving the growth of the market for peripheral vascular devices. We believe that our strong brands, established sales force, expanding suite of peripheral vascular devices, and broad network of vascular surgeon customers position us to capture an increasing share of this large and growing market.

We have sought to take advantage of the trend towards endovascular techniques that utilize more complex, higher-priced devices by acquiring new product lines. For example, we market aortic stent grafts, which are endovascular implants used to treat aortic aneurysms and dissections, and remote endarterectomy devices, which are primarily used in the minimally invasive treatment of blockages in the major arteries of the leg. Our vascular surgeon customers are increasingly performing minimally invasive endovascular procedures, presenting us with attractive opportunities to sell new devices that address their changing product needs. We believe that the opportunities are largely incremental to the markets for vascular surgery devices, which include niche markets where we have traditionally enjoyed comparable success.

We sell our products primarily through a direct sales force. Our sales force was comprised of 61 field sales representatives in North America, the European Union, and Japan as of December 31, 2009. We also sell our

[Table of Contents](#)

products through a network of distributors in various countries outside of the United States and Canada. For the year ended December 31, 2009, approximately 92% of our net sales were generated through our direct sales force, and no customer accounted for more than 2% of our net sales.

Corporate Information

We were incorporated in Massachusetts on November 28, 1983, as Vascutech, Inc. On June 16, 1998, we were reincorporated in Delaware, and on April 6, 2001, we changed our name to LeMaitre Vascular, Inc. Our principal executive offices are located at 63 Second Avenue, Burlington, Massachusetts 01803, and our telephone number is (781) 221-2266.

Where You Can Find More Information

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available through the investor relations portion of our website (www.lemaitre.com) free of charge as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or SEC. Information on our investor relations page and on our website is not part of this Annual Report on Form 10-K or any of our other securities filings unless specifically incorporated herein or therein by reference. In addition, our filings with the Securities and Exchange Commission may be accessed through the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system at www.sec.gov. You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. All statements made in any of our securities filings, including all forward-looking statements or information, are made as of the date of the document in which the statement is included, and we do not assume or undertake any obligation to update any of those statements or documents unless we are required to do so by law. In addition, our Corporate Governance Guidelines, Code of Business Conduct and Ethics and Charters of our Audit, Compensation and Nominating and Corporate Governance Committees are available on our website and are available in print to any stockholder who requests such information.

The Peripheral Vascular Device Market

We estimate that peripheral vascular disease affects more than 20 million people worldwide. The disease encompasses a number of conditions in which the arteries or veins that carry blood to or from the legs, arms, or organs other than the heart become narrowed, obstructed, weakened, or otherwise compromised. In many cases peripheral vascular disease goes undetected, sometimes leading to life-threatening events—such as stroke, ruptured aneurysm, or pulmonary embolism—or death.

Clinical studies have identified several factors that increase the risk of peripheral vascular disease, including smoking, diabetes, obesity, high blood pressure, lack of exercise, coronary artery disease, high cholesterol, and being over the age of 65. Demographic trends suggest an increase in the prevalence of peripheral vascular disease over time, driven primarily by rising levels of obesity and diabetes and an aging population.

Vascular surgeons treat peripheral vascular disease and also perform vascular procedures associated with other diseases, such as end-stage renal disease. We estimate that there are more than 2,000 board-certified vascular surgeons and several thousand general surgeons who perform vascular procedures in the United States, and that there are more than 3,000 vascular surgeons in Europe and Japan. Vascular surgeons perform both conventional vascular surgeries and endovascular procedures. Conventional vascular surgery involves opening the body, cutting vessels, and suturing. Endovascular procedures typically are minimally invasive, catheter-based procedures involving repairing vessels from within using real-time imaging technologies.

We estimate that the worldwide market for peripheral vascular devices is approximately \$3 billion. We believe that this market will grow due to the increase in the incidence and diagnosis of peripheral vascular disease, a shift to higher priced endovascular devices, and the adoption of western healthcare standards by the developing world.

[Table of Contents](#)

Our History

We were founded in 1983 by George D. LeMaitre, M.D., a vascular surgeon who designed and developed the predecessor to our Expandable LeMaitre Valvulotome. Through a combination of strategic acquisition and research and development efforts, we have expanded our catalog to 15 product lines across three product categories.

We have conducted ten acquisitions since 1998:

<u>Year</u>	<u>Acquisition</u>	<u>Key Product Line(s)</u>
1998	Whittaker Screen Printing	Radiopaque tape manufacturing operations
1999	Vermed	Vascular Catheters
2001	Ideas for Medicine	Carotid shunts, vascular catheters, and cholangiogram catheters
2003	Credent	Vascular access grafts
2004	VCS Clip	Anastomotic clips
2005	Endomed	Thoracic and abdominal stent grafts
2007	Vascular Innovations	Contrast injector
2007	Vascular Architects	Remote endarterectomy devices
2007	UnBalloon Technology	Stent graft modeling catheters
2007	Biomateriali	Polyester grafts and patches

Twelve of our 15 product lines were in large part acquired via these acquisitions. We have completed the integration of each of these product lines, consolidating virtually all of the associated manufacturing operations into our Burlington, Massachusetts, headquarters.

Prior to 1999, we had no direct sales force and instead relied on direct marketing to generate brand awareness and product loyalty. In 1999, we began building a direct sales organization that we have continued to expand, most recently into the French and Italian markets. We currently sell products directly to our hospital customers in the United States and Canada, Japan, and most major European markets.

Our Business Strategies

Our goal is to be the leading global provider of medical devices to vascular surgeons.

To achieve this objective, we are utilizing the following long-term strategies:

- **Acquire Complementary Products.** We believe our significant experience in acquiring and integrating product lines and businesses is one of our competitive advantages. We actively track industry developments and plan to acquire additional product lines and businesses as a means of further accessing the peripheral vascular device market. We intend to expand and diversify our product offerings and add new technology platforms.
- **Extend Our Market Reach through Research and Development and Additional Regulatory Approvals.** By refining our current product lines and developing new applications for our existing technologies, we plan to extend our reach into the peripheral vascular device market. We also intend to obtain regulatory approvals for our devices in new markets. For example, we currently market our aortic stent graft devices in the European Union and have focused our near-term efforts on obtaining regulatory approval for these products in the United States. We are also seeking clearance for the sale of The UnBalloon Non-Occlusive Modeling Cather product line in the United States.
- **Expand Our Direct Sales Force.** We sell our products primarily through a direct sales force comprised as of December 31, 2009, of 61 field sales representatives in North America, the European Union, and Japan. As a long-term strategy, we intend to further expand our sales force. We believe that direct-to-hospital sales engender closer customer relationships, allow for higher selling prices and gross margins, and are not subject to the risk of customer churn resulting from distributor turnover.

[Table of Contents](#)

Our Products

The following table describes the primary use and regulatory status of each of our product lines:

Product Category	Product Line	Primary Use	Available for Sale in		
			United States	European Union	Japan
Endovascular	LeverEdge Contrast Injector	Injection of contrast media into blood vessels	✓	✓	
	TAArget Thoracic Stent Graft	Endovascular repair of thoracic aortic aneurysms and dissections	In feasibility study(1)	✓	
	The UnBalloon Non-Occlusive Modeling Catheter	Improvement in the seal of aortic stent grafts	Application submitted (2)	✓	
	UniFit Abdominal Stent Graft	Endovascular repair of abdominal aortic aneurysms	In pivotal study(1)	✓	
	VascuTape Radiopaque Tape	Improvement in precision of vascular and endovascular procedures	✓	✓	✓
Vascular	AlboGraft Vascular Grafts	Synthetic vessels for use in bypass and replacement procedures	✓	✓	
	AlboSure and XenoSure Vascular Patches(3)	Synthetic and biological patches for use in closing incisions in a blood vessel	✓(4)	✓(4)	
	AnastoClip Vessel Closure System	Attachment of blood vessels, primarily for dialysis access	✓	✓	✓
	EndoRE Remote Endarterectomy Devices	Removal of blockages in the major arteries of the leg	✓	✓	
	Expandable LeMaitre Valvulotome	Destruction of vein valves to create vein bypass grafts	✓	✓	✓
	InvisiGrip Vein Stripper	Single-incision removal of varicose veins	✓	✓	✓

[Table of Contents](#)

Product Category	Product Line	Primary Use	Available for Sale in		
			United States	European Union	Japan
	LeMaitre Balloon Catheters	Removal of blood clots; occlusion, and facilitation of blood flow	✓	✓	✓
	Pruitt-Inahara, Pruitt F3, and Flexcel Carotid Shunts	Facilitation of blood flow to brain during carotid plaque removal	✓	✓(5)	✓(5)
General Surgery	Reddick Cholangiogram Catheter	Introduction of dye into the cystic duct	✓	✓	✓
	OptiLock Implantable Port	Central venous infusion of drugs and nutrients	✓	✓	

- (1) In the United States we are conducting a feasibility clinical study and a pivotal clinical study on the TAArget Thoracic Stent Graft and UniFit Abdominal Stent Graft, respectively. See “—Clinical Studies” for a description of these clinical studies.
- (2) We have submitted an application for 510(k) clearance with the U.S Food and Drug Administration.
- (3) The XenoSure Biologic Vascular Patch is manufactured by Neovasc Inc. We have rights to distribute this product under our “XenoSure” brand in the United States and most of Europe until January 26, 2016, and an option to acquire this product commencing January 2, 2014 and expiring January 26, 2016.
- (4) The AlboSure Vascular Patch is only approved for sale in the European Union and is not yet commercially available anywhere. We intend to begin selling this device in the European Union in 2010. The XenoSure Biologic Vascular Patch is only available for sale in the United States. Neovasc is actively seeking approval for us to sell this product in the European Union.
- (5) The Pruitt F3 Carotid Shunt is only available for sale in the United States. The Flexcel Carotid Shunt is available for sale in the United States and the European Union, but is not yet available for sale in Japan. We have submitted an application for Shonin registration of the Flexcel Carotid Shunt with the Japan Ministry of Health, Labor and Welfare.

We also distribute the Powerlink System—a bifurcated abdominal stent graft manufactured by Endologix, Inc.—in several European countries, including Germany, France, and the United Kingdom. We believe that this product complements our TAArget Thoracic Stent Graft and UniFit Abdominal Stent Graft product lines, allowing our growing European sales force to offer a complete range of stent grafts for the entire aorta.

Additionally, we engage in a limited amount of private label manufacturing.

Endovascular

Our endovascular products are used primarily by vascular surgeons in minimally invasive endovascular procedures, such as stent-grafting, angioplasty, stenting, and atherectomy.

TAArget Thoracic Stent Graft

The TAArget Thoracic Stent Graft is an endovascular graft used to treat an aortic aneurysm, a weakening and ballooning of the aorta, or an aortic dissection, a separation of the layers of the aortic wall that often leads to rupture and death, in each case in the upper part of the aorta, known as the thoracic aorta. The TAArget Thoracic Stent Graft features our TT Tortuous Tracker Delivery System. TAArget’s flexible, encapsulated design uses

[Table of Contents](#)

expanded polytetrafluoroethylene (ePTFE), which is designed to prevent the stent scaffolding from contacting either the blood stream or the vessel wall. This design also allows us to offer a wide range of stent grafts sizes, including tapered grafts, which fit a wider range of patient anatomies than many of our competitors' products. Our TAArget Thoracic Stent Graft product line is currently sold in the European Union and a small number of foreign jurisdictions. We are currently conducting a feasibility study in the United States for the TAArget device. See “—Clinical Studies” for a description of this clinical study.

The UnBalloon Non-Occlusive Modeling Catheter

The UnBalloon Non-Occlusive Modeling Catheter is used to apply radial pressure to the inside of an aortic stent graft in order to seal the outer lining of the stent graft against the interior wall of the aorta. The physician expands the device's nitinol mesh cage inside of the stent graft in order to appose the stent graft lining against the vessel wall. An adequate seal will exclude blood flow from the aneurysm, thereby preventing an endoleak, a condition in which blood continues to enter the aneurismal sac, increasing the risk of aneurysm rupture and death. Unlike a balloon catheter, The UnBalloon catheter dilates the aortic stent graft without occluding blood flow, allowing the physician more time to repair an endoleak or model the stent graft while minimizing the risk of stent graft migration. The UnBalloon Non-Occlusive Modeling Catheter product line is currently sold in the European Union. We have submitted an application for 510(k) clearance of The UnBalloon Non-Occlusive Modeling Catheter with the U.S Food and Drug Administration (the FDA).

UniFit Abdominal Stent Graft

The UniFit Abdominal Stent Graft is a non-bifurcated endovascular graft used to treat aneurysms in the lower part of the aorta, known as the abdominal aorta, and the iliac arteries. The UniFit device is similar in design to the TAArget device, with a flexible, encapsulated design and similar manufacturing advantages that allow us to offer a wide range of stent graft sizes and custom-built devices. The UniFit Abdominal Stent Graft is also available with the TT Tortuous Tracker Delivery System. This product line is currently sold in the European Union and a small number of foreign jurisdictions. We are currently conducting a pivotal study in the United States for the UniFit device. See “—Clinical Studies” for a description of this clinical study.

VascuTape Radiopaque Tape

VascuTape Radiopaque Tape is a flexible, medical-grade tape with centimeter or millimeter markings printed in our proprietary radiopaque ink that is visible both to the eye and to an x-ray machine or fluoroscope. VascuTape Radiopaque Tape is applied to the skin and provides interventionalists with a simple way to cross-reference precisely between the inside and the outside of a patient's body, allowing them to accurately size or locate tributaries or lesions beneath the skin. VascuTape Radiopaque Tape enables smaller skin incisions, more accurate lesion location, more precise stent and catheter sizing, and reduced contrast injections. Our VascuTape product line is currently sold in the United States, the European Union, Japan, and many other foreign jurisdictions.

Vascular Products

Our vascular products are used primarily in open vascular surgery for the treatment of peripheral vascular disease.

AlboSure and XenoSure Vascular Patches

Vascular surgeons use patches in conjunction with carotid endarterectomy, remote endarterectomy, and other vascular reconstructions. We recently received regulatory approval to market our AlboSure Vascular Patch in the European Union. The AlboSure Vascular Patch is a polyester patch used in conjunction with endarterectomy and vascular reconstructions. We intend to begin selling this device in the European Union in

[Table of Contents](#)

2010. We also distribute the XenoSure Biologic Vascular Patch, a patch made from bovine pericardium. The patch is exceptionally strong, uniform and easy to handle and suture. We have rights to distribute this product under our “XenoSure” brand in the United States and most of Europe until January 26, 2016, and an option to acquire this product commencing January 2, 2014 and expiring January 26, 2016. We currently sell this product in the United States. Neovasc is actively seeking approval for us to sell this product in the European Union.

AlboGraft Vascular Graft

The AlboGraft Vascular Graft is a collagen-coated polyester graft used to bypass or replace diseased arteries. Available in both straight tube and bifurcated versions, the AlboGraft Vascular Graft offers excellent feel and ease of manipulation to our surgeon customers, while the collagen coating provides immediate sealing of suture holes. These knitted and woven vascular grafts are an essential part of the vascular surgeon’s toolkit and complement LeMaitre Vascular’s other product lines. Our AlboGraft Vascular Graft product line is currently sold in the United States, the European Union and many other foreign jurisdictions.

We acquired the AlboGraft Vascular Graft product line through our acquisition of Biomateriali S.r.l. in December 2007. Until recently, this product line was sold through an exclusive distribution agreement with Edwards Lifesciences AG. In March 2009, we paid \$3.5 million to Edward Lifesciences in exchange for the early termination of this distribution agreement, the purchase of their AlboGraft customer list and certain customer contracts, and their provision of sales and marketing services. We also repurchased most of Edwards’ remaining AlboGraft inventory. We commenced direct-to-hospital sales in Europe in March 2009 and introduced the device in the United States in March 2010.

AnastoClip and AnastoClip GC Vessel Closure Systems

The AnastoClip Vessel Closure System is a titanium clip implanted by vascular surgeons to attach vessels, native and prosthetic, to each other. The AnastoClip Vessel Closure System creates an interrupted anastomosis, or a vessel attachment that expands and contracts as the vessel pulses, which we believe improves the durability of the anastomosis. A retrospective 1,110-patient clinical study published in the August 2003 *Journal of Vascular Surgery* found that the AnastoClip Vessel Closure System improved 24-month patency versus traditional continuous sutures from approximately 34% to 54% in arterio-venous fistulae, which are surgical attachments of arteries and veins, and from approximately 17% to 36% in prosthetic grafts attachments. Patency data was collected from a total of 1,385 vascular access anastomoses. Our AnastoClip Vessel Closure System product line is currently sold in the United States, the European Union, Japan, and many other foreign jurisdictions.

In the European Union, we recently began a limited market release of next-generation version called the AnastoClip GC Vessel Closure System with a new clip design that is intended to provide additional security and ease of use. We intend to submit an application for 510(k) clearance of the AnastoClip GC Vessel Closure System with the FDA.

EndoRE Remote Endarterectomy Devices

The EndoRE line of remote endarterectomy devices are used to remove severe atherosclerotic blockages from the major arteries of the leg in a minimally invasive procedure requiring a single incision in the groin. Our EndoRE devices are used to separate the sclerotic blockage from the vessel, cut the far end of the blockage to free it for removal, and then withdraw the blockage from the vessel. A retrospective 133-patient clinical study published in the February 2006 *Journal of Vascular Surgery* found that, compared to bypass procedures, this minimally invasive procedure leads to less trauma to the patient and reduced hospital stays. It also preserves the patient’s own veins for future use in an unrelated bypass procedure. Our EndoRE Remote Endarterectomy Devices are currently sold in the United States and Europe.

Expandable LeMaitre Valvulotome

The Expandable LeMaitre Valvulotome cuts valves in the saphenous vein, a vein that runs from the ankle to the groin, so that it can function as a bypass vessel to carry blood past diseased arteries to the lower leg or the foot. The Expandable LeMaitre Valvulotome is the only self-sizing and self-centering valvulotome available. We believe that the Expandable LeMaitre Valvulotome reduces costs for hospitals by enabling less invasive bypass surgery to be performed with several one-inch incisions rather than one continuous ankle-to-groin incision, thereby reducing the length of hospital stays and the likelihood of wound complications. The Expandable LeMaitre Valvulotome is the sixth generation of the original valvulotome developed by our founder, George D. LeMaitre, M.D. Our Expandable LeMaitre Valvulotome product line is currently sold in the United States, the European Union, Japan, and many other foreign jurisdictions.

LeMaitre Vascular Catheters for Embolectomy, Occlusion and Perfusion

Embolectomy catheters are used to remove blood clots from arteries or veins. We manufacture single-lumen latex and latex-free embolectomy catheters as well as dual-lumen latex embolectomy catheters. The dual-lumen embolectomy catheter allows clot removal and simultaneous irrigation or guide-wire trackability. Occlusion catheters temporarily occlude blood flow to allow the vascular surgeon time and space to complete a given procedure. Perfusion catheters temporarily perfuse blood and other liquids into the vasculature. Our Pruitt Occlusion and Perfusion Catheters reduce vessel trauma by using internal balloon fixation rather than traditional external clamp fixation. Our embolectomy, occlusion, and perfusion catheters are currently sold in the United States, the European Union, Japan, and many other foreign jurisdictions.

Pruitt-Inahara, Pruitt F3, and Flexcel Carotid Shunts

The Pruitt-Inahara, Pruitt F3, and Flexcel Carotid Shunts are used to temporarily divert, or shunt, blood to the brain while the surgeon removes plaque from the carotid artery in a carotid endarterectomy surgery. Our Pruitt-Inahara and Pruitt F3 shunts feature internal balloon fixation that eliminates the need for clamps, thereby reducing vessel trauma. Our Flexcel shunt is a non-balloon shunt offered for surgeons who prefer to secure their shunt using the traditional method of externally placed clamps. Our Pruitt-Inahara Carotid Shunts are currently sold in the United States, the European Union, Japan, and many other foreign jurisdictions. The Pruitt F3 Carotid Shunt is only available for sale in the United States. The Flexcel Carotid Shunt is available for sale in the United States, the European Union, and many other foreign jurisdictions, but is not yet available for sale in Japan.

General Surgery Products

Our general surgery products are used primarily by general surgeons in non-vascular procedures. Our primary general surgery product is the Reddick Cholangiogram Catheter, which is used to inject dye into the cystic duct during a laparoscopic cholecystectomy. In this procedure, the gall bladder is dissected and removed through small punctures in the abdomen. We also offer two laparoscopic accessories used in laparoscopic gall bladder removal, as well as an implantable port used in the intravascular delivery of fluid, medications, and nutritionals. These products are currently sold in the United States, the European Union, and many other foreign jurisdictions.

Clinical Studies

We conduct clinical studies in order to obtain regulatory approval and provide marketing data for our product lines. The goal of a clinical study is to evaluate the safety and/or clinical effectiveness of a device or the substantial equivalence to another device. We currently have two active U.S. clinical studies:

- ***UniFit Abdominal Stent Graft.*** We are conducting a U.S. pivotal study of our UniFit Abdominal Stent Graft called the UNITE Trial. The UNITE Trial is intended to evaluate the safety and effectiveness of the UniFit Abdominal Stent Graft in the treatment of aorto, aorto-iliac, and/or iliac aneurysms as

[Table of Contents](#)

compared against that of a previously approved device, and is intended to be the principal basis for premarket application (PMA) approval. In May 2007, we received approval from the FDA to commence the UNITE trial. We plan to enroll 90 patients at up to 22 institutions. As of March 25, 2010, we had enrolled 54 patients in the trial. The primary effectiveness endpoint of the study is based on aneurysm exclusion as evaluated through one-year follow-up.

- ***TAArget Thoracic Stent Graft.*** We have begun preparations for a U.S. feasibility study of our TAArget Thoracic Stent Graft called the ENTRUST Trial. A feasibility study is a preliminary study and is not a pivotal trial. The ENTRUST Trial is intended to evaluate the safety and efficacy of the TAArget Thoracic Stent Graft in the treatment of aneurysms in the descending thoracic aorta as compared against that of open surgical thoracic aorta repair. We plan to enroll 30 patients at up to five centers. These patients must be followed for at least six months prior to our application to the FDA to conduct a pivotal study in support of a potential PMA approval. The primary effectiveness endpoint of the study is based on endoleak occurrence, aneurysm size change, device migration, aneurysm exclusion, and aneurysm rupture as evaluated through six-month follow-up. The primary safety endpoint of the study is based on major adverse event occurrence as evaluated through six-month follow-up.

In May 2008, we submitted an investigational device exemption (IDE) application to the FDA to begin the ENTRUST Trial. Because the TAArget Thoracic Stent Graft is a “significant risk” device for regulatory purposes, the FDA must approve the IDE application prior to the start of the ENTRUST Trial. On December 4, 2009, we received conditional approval from the FDA to commence the ENTRUST Trial, provided that we resolve the issues identified in the conditional approval letter to the FDA’s satisfaction. We intend to work with the FDA to resolve these issues, although there can be no assurance that the FDA will unconditionally approve the IDE application.

Clinical studies are subject to a number of factors that can influence results, making it difficult to draw general conclusions. Peripheral vascular studies have historically involved very few patients, with even fewer patients available for long-term follow up and analysis. Among a small number of treated patients, these factors can influence the significance of clinical study results. Consequently, findings from one study should not be used to predict limitations or benefits of a particular means of treatment. We continually evaluate the potential financial benefits and costs of our clinical studies and the products being evaluated in them. If we determine that the costs associated with obtaining regulatory approval of a product exceed the potential financial benefits of that product or if the projected development timeline is inconsistent with our investment horizon, we may choose to stop a clinical study and/or the development of a product. See “Risk Factors—If we are not successful in obtaining and maintaining clearances and approvals from governmental agencies, we will not be able to sell our products, and our future growth will be significantly hampered.” If these clinical studies are unsuccessful, or if the FDA or other regulatory agencies do not accept or approve the results of such studies, these products may not successfully come to market and our business prospects may suffer.

Sales and Marketing

As of December 31, 2009, we employed 61 field sales representatives. We believe that the expansion of our direct sales force has been a key factor in our success and it remains one of our primary long-term strategies. As a long-term strategy, we intend to further expand our sales force. Outside our direct markets, we generally sell our products through a network of country-specific distributors. We typically sign exclusive distribution agreements with terms of up to five years specifying minimum annual sales volumes and pricing. These agreements are only renewable by mutual agreement. As exceptions to our direct sales and country-specific distribution models, we sell unbranded polyester vascular graft components under a private label manufacturing program.

In addition, we engage in direct marketing efforts, which we believe are critical to our brand development and continued success. We believe that direct marketing allows us to market to vascular surgeons beyond the reach of our direct sales force.

Research and Development

Our research and development has historically focused on developing enhancements and extensions to our existing product lines. Our current product development efforts are largely focused on the endovascular space, including improvements to our TAArget and UniFit Stent Grafts. In recent years we have increased investment in product research and development, with the goal of more rapidly developing new products, line extensions, and next-generation devices in our endovascular and vascular product categories.

Our products are subject to our design control procedures throughout the various stages of product development. These procedures may include bench testing, animal testing, human use testing conducted by independent physicians, and post-market surveillance of product performance, as appropriate. We may use feedback received from independent physicians to demonstrate product functionality, safety, and effectiveness before commencing full-scale marketing of any product.

For fiscal 2007, 2008, and 2009, our research and development expenditures, including clinical study expenditures, were \$4.6 million, \$5.3 million and \$5.9 million, respectively, and represented between 11% and 12% of net sales. As of December 31, 2009, our research and development staff consisted of 15 full-time engineers and technicians.

Manufacturing

Our manufacturing facilities are located in Burlington, Massachusetts, where most of our product lines are produced in a 5,556 square foot ISO 14644-1 Class 8 clean room, and in Brindisi, Italy, where we produce our AlboGraft Vascular Graft and AlboSure Vascular Patch product lines and perform select other manufacturing processes in a 7,535 square foot ISO 14644-1 Class 8 clean room. In addition, with our acquisition of the business of Vascular Architects in September 2007, we inherited certain third-party manufacturing relationships relating to the production of each of the EndoRE Remote Endarterectomy Devices.

We manufacture certain proprietary components, assemble most of our devices ourselves, and inspect, test, and package all of our finished products. By designing and manufacturing many of our products from raw materials, and assembling and testing as many of our subassemblies and products as practical, we believe that we can maintain better quality control, ensure compliance with applicable regulatory standards and our internal specifications, limit outside access to our proprietary technology, ensure adequate product supply, and make design modifications in a timely manner. We have custom-designed proprietary manufacturing and processing equipment and have developed proprietary enhancements for existing production machinery.

Nearly all of our products are built to stock. The only exceptions are the aortic stent grafts that we custom build for specific anatomies as requested by physicians. We believe that our custom manufacturing of stent grafts engenders physician loyalty and brand awareness.

Our management information systems provide us with the ability to evaluate our performance, collect business intelligence, and make better strategic decisions. These systems include order entry, invoicing, on-line inventory management, lot traceability, purchasing, shop floor control, and shipping and distribution analysis, as well as various accounting-oriented functions. During day-to-day operations, these systems enable us to track our products from the inception of an order through the manufacturing process and then through delivery of the product to the customer.

We have implemented a variety of manufacturing strategies and techniques with the goal of improving our gross margin and increasing product quality. By instituting lean manufacturing techniques, we have been able to reduce time, space, and materials from several of our production lines, while simultaneously improving quality.

[Table of Contents](#)

We purchase components from, and have certain product lines manufactured by, third parties. Most of our components are readily available from several supply sources, but we do rely on single- and limited-source suppliers for several of our key product components and our third-party-manufactured products. We do not have contractual arrangements with most of these suppliers and manufacturers, and we order our supplies and product on an as-needed basis. To date, we not experienced any material disruption in the adequate supply from existing sources of product and components.

Any disruption in our manufacturing capacity could impact our ability to produce sufficient inventory and meet the demands of our customers, which could adversely affect our financial condition and results of operations.

Our manufacturing facilities have been certified to ISO 13485:2003 quality management system standards, which enables us to satisfy certain regulatory requirements of the European Union, Canada, and other foreign jurisdictions. If we were to lose these certifications, we would no longer be able to sell our products in these countries until we made the necessary corrections to our operations or, in the case of the European Union, satisfactorily completed an alternate approval route that did not rely on compliance with quality system standards. Our manufacturing facilities are subject to periodic inspections by regulatory authorities and our Notified Body (described below) to ensure compliance with domestic and non-U.S. regulatory requirements. See “—Government Regulation.”

Competition

The markets in which our 15 product lines compete are characterized by rapid change resulting from technological advances and scientific discoveries. No one company competes against us in all of our product lines. Rather, we compete with a range of companies, from large to small, including both publicly traded and privately held device companies. Notable competitors include Applied Medical Resources Corporation, Cardiovascular Systems Inc., Cook Group Incorporated, C.R. Bard, Inc., Edwards Lifesciences Corporation, Getinge AB, Medtronic, Inc., Terumo Medical Corporation, Uresil, LLC, and W. L. Gore & Associates.

Our products compete primarily on the basis of their innovative technology, quality, reliability, ease of use, cost-effectiveness, physician familiarity, brand recognition, and service support. Several of our products are sold at higher prices than those of our competitors. We believe that our continued success will depend on our ability to broaden and optimize our direct sales channel, acquire or develop additional vascular device product lines, obtain patent or other product protections, obtain regulatory and reimbursement approvals, maintain sufficient inventory to meet customer demand, and attract and retain skilled personnel.

Many of our competitors have substantially greater financial, technological, research and development, regulatory, marketing, sales, and personnel resources than we do. Certain of these competitors may also have greater experience in developing products, obtaining regulatory approvals, and manufacturing and marketing such products. Certain of these competitors may obtain patent protection or regulatory approval or clearance, or achieve product commercialization, before us, any of which could materially adversely affect us. We have from time to time experienced difficulties competing against very large companies. For example, we believe that intense competition from Medtronic, W. L. Gore and Cook has affected the adoption of our TAArget Thoracic Stent Graft in European markets

Intellectual Property

We believe that our success is dependent, to a certain extent, on the development and maintenance of proprietary aspects of our technologies. We rely on a combination of patents, trademarks, trade secret laws, and confidentiality and invention assignment agreements to protect our intellectual property rights.

[Table of Contents](#)

As of December 31, 2009, we actively maintained 29 issued patents and 6 pending patent applications in the United States, Europe, Japan, Australia, Canada, and other countries throughout the world relating to various aspects of our products and/or manufacturing processes. The majority of our issued U.S. patents are set to expire at various times from 2012 to 2020. We do not expect the near-term expiration of any of our issued U.S. patents to adversely affect our intellectual property position.

We intend to file and prosecute patent applications for our technology in jurisdictions where we believe that patent protection is effective and advisable. Generally, for products that we believe are appropriate for patent protection, we will attempt to obtain patents in the United States and key markets of the European Union. However, depending on circumstances, we may not apply for patents in all or any of those jurisdictions, or we may pursue patent protection elsewhere.

Notwithstanding the foregoing, the patent positions of medical device companies, including our company, are uncertain and involve complex and evolving legal and factual questions. The coverage sought in a patent application can be denied or significantly reduced either before or after the patent is issued. Consequently, there can be no assurance that any of our pending patent applications will result in an issued patent. There is also no assurance that any existing or future patent will provide significant protection or commercial advantage, or whether any existing or future patent will be dominated by a more basic patent, thus possibly requiring us to obtain a license to produce and sell the product.

While most of the world relies on a first-to-file system, the U.S. gives patent rights to whomever was the first to invent an idea, even if the inventor filed the related patent application after another was filed covering the same idea. Because patent applications can be maintained in secrecy for at least 18 months after their earliest priority date, and publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain that we were the first to invent the subject matter covered by each of our pending U.S. patent applications or that we were the first to file non-U.S. patent applications for such subject matter. For example, in 2005 and 2006 Boston Scientific Corporation initiated opposition proceedings in the European Patent Office claiming that we were not the first to file a patent application on certain material. As a result of these opposition proceedings, some of our patent claims were canceled. Although the cancellation of these patent claims did not affect our ability to manufacture, distribute, or sell any of our products, it could affect our right to exclude others from selling products similar to our TAArget and UniFit stent grafts in Europe.

Because the U.S. follows a first-to-invent system, if a third party files a patent application relating to an invention claimed in our patents or patent applications, we may be required to participate in an interference proceeding declared by the U.S. Patent and Trademark Office to determine who was the first to invent the idea in question and therefore who should own the patent rights to that idea. Such a proceeding could involve substantial uncertainties and cost, even if the eventual outcome is favorable to us. There can be no assurance that our patents, if issued, would be upheld as valid in court.

Third parties may claim that our products infringe on their patents and other intellectual property rights. Some companies in the medical device industry have used intellectual property infringement litigation to gain a competitive advantage. If a competitor were to challenge our patents, licenses, or other intellectual property rights, or assert that our products infringe its patent or other intellectual property rights, we could incur substantial litigation costs, be forced to make expensive changes to our product designs, license rights in order to continue manufacturing and selling our products, or pay substantial damages. Third-party infringement claims, regardless of their outcome, would not only consume our financial resources but also divert our management's time and effort. Such claims could also cause our customers or potential customers to defer or limit their purchase or use of the affected products until resolution of the claim.

Certain aspects of our products are covered by patents held by third parties. We manufacture, market, and sell these products pursuant to license agreements with these third parties. These arrangements require us to pay royalties, typically determined as a percentage of our net sales for the underlying product. If we fail to make

[Table of Contents](#)

these payments or otherwise fail to observe the terms of these agreements, we may lose our ability to sell these products. For example, we manufacture, market, and sell our TAArget and UniFit stent grafts pursuant to a sublicense from Bard Peripheral Vascular, Inc., a subsidiary of C.R. Bard, Inc., to a U.S. patent covering aspects of ePTFE. Our arrangement with Bard may preclude us from assigning the sublicense to a third party, including in connection with the sale of more than 30% of our capital stock or all or substantially all of our assets, without the prior consent of Bard. The loss by us of our right to manufacture, market, and sell our TAArget and UniFit products could adversely affect our business and results of operations, perhaps materially. We also manufacture, market, and sell our AnastoClip and AnstoClip GC Vessel Closure Systems, EndoHelix Retrieval Device, Grice Suture Needle, MollRing Cutter Transection Device, Reddick-Saye Screw, and Periscope Dissector products pursuant to licenses with third-party patent holders.

We believe that our strong brands have been an important factor in our success. We rely on common law and registered trademarks to protect our product brands. Some of our registered trademarks are LeMaitre, Pruitt, VascuTape, Glow 'N Tell, and Reddick, each of which is registered in the United States and the European Union, and in certain cases in other foreign countries.

We rely on trade secret protection for certain unpatented aspects of other proprietary technology. Some of our products are not protected by patents. In the past, other companies have independently developed or otherwise acquired comparable or substantially equivalent proprietary information and techniques, and there can be no assurance that others will not do so in the future or otherwise gain access to our proprietary technology or disclose such technology, or that we can meaningfully protect our trade secrets. We have a policy of requiring key employees and consultants to execute confidentiality agreements upon the commencement of an employment or consulting relationship with us. Our confidentiality agreements also require our employees to assign to us all rights to any inventions made or conceived during their employment with us. We also generally require our consultants to assign to us any inventions made during the course of their engagement by us. There can be no assurance, however, that these agreements will provide meaningful protection or adequate remedies for us in the event of unauthorized use, transfer, or disclosure of confidential information or inventions.

The laws of foreign countries generally do not protect our proprietary rights to the same extent as do the laws of the United States. In addition, we may experience more difficulty enforcing our proprietary rights in certain foreign jurisdictions.

Government Regulation

The products we manufacture and market are subject to regulation by the FDA, and, in some instances, other federal and state authorities and foreign governments.

United States Regulation

Our products are medical devices subject to extensive regulation by the FDA under the Federal Food, Drug, and Cosmetic Act (the FDCA). FDA regulations govern, among other things, product development, testing, manufacture, packaging, labeling, storage, clearance or approval, advertising and promotion, sales and distribution, and import and export.

Premarket Pathways

Medical devices must receive either 510(k) clearance or premarket application approval (PMA approval) from the FDA prior to commercial distribution. Devices deemed to pose relatively less risk are placed in either class I or II, which requires the manufacturer to submit a premarket notification requesting permission for commercial distribution; this is known as 510(k) clearance. Some low-risk devices are exempted from this requirement. Class II devices may be subject to special controls, such as performance standards and FDA guidelines that are not applied to class I devices. Devices deemed by the FDA to pose the greatest risk, such as

[Table of Contents](#)

life-sustaining, life-supporting, or implantable devices, or devices deemed not substantially equivalent to a previously 510(k)-cleared device or to a preamendment class III device (*i.e.*, one in commercial distribution before May 28, 1976) for which PMA applications have not been called, are placed in class III, which requires PMA approval. In most cases, a user fee is required for 510(k) submissions and PMA applications, which in the case of PMA applications can be very costly.

510(k) Clearance. To obtain 510(k) clearance, a manufacturer must submit a premarket notification demonstrating that the proposed device is substantially equivalent in intended use and in safety and effectiveness to a “predicate device” (*i.e.*, a previously 510(k)-cleared class I or class II device or a preamendment class III device for which the FDA has not yet called for PMA applications). The FDA’s 510(k) clearance pathway usually takes from three to twelve months, but it can last longer. In reviewing a premarket notification, the FDA may request additional information, including clinical data. For example, in reviewing our premarket notification for the AlboGraft Vascular Graft, the FDA requested, and we submitted, clinical data from the use of the device in other countries where it was then already approved for sale. All of our devices sold in the United States to date are marketed pursuant to the 510(k) process.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, requires a new 510(k) clearance. The FDA requires each manufacturer to make this determination in the first instance, but the FDA can review any such decision. If the FDA disagrees with a manufacturer’s decision not to seek a new 510(k) clearance, the agency may retroactively require the manufacturer to seek 510(k) clearance. The FDA also can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or PMA approval is obtained. Also, the manufacturer may be subject to significant regulatory fines or penalties.

PMA Approval. The PMA approval pathway requires proof of the safety and effectiveness of the proposed device to the FDA’s satisfaction, making this pathway much more costly, lengthy, and uncertain. A PMA application must provide extensive preclinical and clinical trial data, as well as detailed information about the device and its components regarding, among other things, device design, manufacturing, and labeling. As part of the PMA review, the FDA will typically inspect the manufacturer’s facilities for compliance with the Quality System Regulation, or QSR, which imposes elaborate testing, control, documentation, and other quality assurance procedures on the manufacturing process.

If the FDA approves a PMA, the approved indications or claims may be more limited than those originally sought. The PMA can include post-approval conditions that the FDA believes to be necessary to ensure the safety and effectiveness of the device including, among other things, restrictions on labeling, promotion, sale, and distribution. Failure to comply with the conditions of approval can result in material adverse enforcement action, including the loss or withdrawal of the approval. Even after approval of a PMA, a new PMA or PMA supplement is required if the device or its labeling or manufacturing process are modified. Supplements to a PMA often require the submission of the same type of information required for an original PMA, except that the supplement is generally limited to that information needed to support the proposed change from the product covered by the original PMA.

Clinical Trials. A clinical trial is typically required to support a PMA application and is sometimes required to support 510(k) clearance. In some cases, one or more smaller feasibility IDE studies may precede a pivotal IDE clinical trial intended to comprehensively demonstrate the safety and effectiveness of the investigational device. All clinical studies of investigational devices must be conducted in compliance with the FDA’s extensive requirements. If an investigational device could pose a significant risk to patients (as defined in the regulations), the FDA, prior to initiation of clinical use, must approve an IDE application showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. A non-significant risk device does not require submission to the FDA of an IDE application. Both significant risk and non-significant risk investigational devices require approval from institutional review boards, or IRBs, at the study centers where the

[Table of Contents](#)

device will be used. The FDA and the IRB at each institution at which a clinical trial is being performed may suspend a clinical trial at any time for various reasons, including a belief that the subjects are being exposed to an unacceptable health risk.

In May 2008, we submitted an investigational device exemption (IDE) application to the FDA to begin our ENTRUST Trial. Because the TAArget Thoracic Stent Graft is a “significant risk” device for regulatory purposes, the FDA must approve the IDE application prior to the start of the ENTRUST Trial. On December 4, 2009, we received conditional approval from the FDA to commence the ENTRUST Trial, provided that we resolve the issues identified in the conditional approval letter to the FDA’s satisfaction. We intend to work with the FDA to resolve these issues, although there can be no assurance that the FDA will unconditionally approve the IDE application.

During a study, the sponsor must comply with the FDA’s IDE requirements for investigator selection, trial monitoring, reporting, record keeping, and prohibitions on the promotion of investigational devices. The investigators must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of investigational devices, and comply with all reporting and record-keeping requirements. Required records and reports are subject to inspection by the FDA. Prior to granting PMA approval, the FDA typically inspects the records relating to the conduct of the study and the clinical data supporting the PMA application for compliance with IDE requirements.

In January 2008, the FDA audited the conduct of the feasibility study and pivotal clinical trial of our UniFit Abdominal Stent Graft. As a result of this audit, the FDA issued a formal notification, or Form FDA-483, listing nine observations. Specifically, the FDA observed that we had not adequately supervised participating sites, made all required reports to those sites and the FDA, or adequately maintained all records required by FDA regulations. In June 2008, the FDA issued a public Warning Letter regarding many of the matters cited in the Form FDA-483. After receiving this Warning Letter, we submitted a response letter to the FDA detailing our implementation of corrective actions, and in July 2008, we received a letter from the FDA indicating that the corrective actions that we have developed and implemented appear to be adequate. In February 2010, the FDA conducted a follow-up audit of the feasibility study and pivotal clinical trial. At this time we are not aware of any adverse findings, but our corrective actions remain subject to further verification as part of any future inspection, and we cannot assure you that we have been or will continue to be successful in implementing these changes or that the FDA will continue to agree that our implementation is adequate. If the FDA determines that we are not in substantial compliance with IDE requirements, they may take enforcement action against us, and the conduct of our clinical trial could be interrupted or discontinued.

Although the QSR does not fully apply to investigational devices, the requirement for controls on design and development does apply. The sponsor also must manufacture the investigational device in conformity with the quality controls described in the IDE application and any conditions of IDE approval that FDA may impose with respect to manufacturing.

Historically, our products have been introduced into the market using the 510(k) clearance procedure, and we have not used the more burdensome PMA process for any of the products that we currently market or sell in the United States. In contrast, the FDA is requiring that both our UniFit Abdominal Stent Graft and TAArget Thoracic Stent Graft undergo the PMA process.

Postmarket Regulation

After a device is placed on the market, regardless of the classification or premarket pathway, significant regulatory requirements apply. These include:

- manufacturing establishment registration and device listing with the FDA;
- the QSR, which requires finished device manufacturers, including third-party or contract manufacturers, to follow stringent design, testing, control, documentation, and other quality assurance procedures in all aspects of manufacturing;

[Table of Contents](#)

- labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved, or off-label uses and other requirements related to promotional activities;
- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur; and
- corrections and removal reporting regulations, which require that manufacturers report to the FDA any field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health.

We are subject to inspection and marketing surveillance by the FDA to determine our compliance with regulatory requirements. Non-compliance with applicable FDA requirements can result in, among other things, public warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, failure of the FDA to grant marketing approvals, withdrawal of marketing approvals, a recommendation by the FDA to disallow us to enter into government contracts, and criminal prosecutions. The FDA also has the authority to request repair, replacement, or refund of the cost of any device manufactured or distributed by us. 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.

Non-U.S. sales of medical devices manufactured in the United States that are not approved or cleared by the FDA for use in the United States, or are banned or deviate from lawful performance standards, are subject to FDA export requirements. Before exporting such products to a foreign country, we must first comply with the FDA's regulatory procedures for exporting unapproved devices.

Other U.S. Regulations

We and our products are also subject to a variety of state and local laws in those jurisdictions where our products are or will be marketed, and federal, state, and local laws relating to matters such as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances. We are subject to various federal and state laws governing our relationships with the physicians and others who purchase or make referrals for our products. For instance, federal law prohibits payments of any form that are intended to induce a referral for any item payable under Medicare, Medicaid, or any other federal healthcare program. Many states have similar laws. There can be no assurance that we will not be required to incur significant costs to comply with such laws and regulations now or in the future or that such laws or regulations will not have a material adverse effect upon our ability to do business.

We are subject to federal, state, and local laws, rules, regulations, and policies governing the use, generation, manufacture, storage, air emission, effluent discharge, handling, and disposal of certain hazardous and potentially hazardous substances used in connection with our operations. Although we believe that we have complied with these laws and regulations in all material respects and to date have not been required to take any action to correct any noncompliance, there can be no assurance that we will not be required to incur significant costs to comply with environmental regulations in the future.

Non-U.S. Regulation

Sales of medical devices are subject to regulatory requirements in many countries. The regulatory review process may vary greatly from country to country. For example, the European Union has adopted numerous directives and standards relating to medical devices regulating their design, manufacture, clinical trials, labeling, and adverse event reporting, including the Medical Devices Directive (93/42/EEC), which is applicable to our products. Devices that comply with the requirements of the Medical Devices Directive are entitled to bear a *Conformité Européenne*, or CE mark, indicating that the device conforms with the essential requirements of the applicable directive and can be commercially distributed in countries that are members of the European Union, as

[Table of Contents](#)

well as Iceland, Lichtenstein, Norway, and Switzerland. Each member state of the European Union has implemented the directives into its respective national law and has each established a “Competent Authority” to apply the directive in its territory.

The Directive defines a classification system placing devices into Class I, IIa, IIb, or III, depending on the risks and characteristics of the medical device. The Directive also defines the essential requirements that devices must meet before being placed on the market, establishes assessment procedures for approving a device for marketing, and creates mechanisms for national authorities to manage implementation or to intervene when public health requires. Essential requirements include manufacturing, design, performance, labeling, and safety requirements, and may include providing certain clinical data. These requirements vary based on the type of the device and other related factors.

A manufacturer of low-risk devices typically may demonstrate conformity to the essential requirements based on a self-declaration. The European Standardization Committees have adopted numerous harmonized standards for specific types of medical devices. Compliance with relevant standards establishes a presumption of conformity with the essential requirements. Manufacturers of higher-risk devices generally must use a “Notified Body”—an appointed independent third party to assess conformity. This third-party assessment may consist of an audit of the manufacturer’s quality system and specific testing of the manufacturer’s devices. An assessment by a Notified Body in one country within the European Union is generally required in order for a manufacturer to commercially distribute the product throughout the European Union. Most of our devices are considered higher-risk devices that require Notified Body assessment.

The European medical device laws also address the advertising and promotion of medical devices, clinical investigations, and requirements for handling adverse events. Post-market surveillance of medical devices in the European Union is generally conducted on a country-by-country basis; however, the Directive sets forth certain specific requirements for reporting adverse events. The Medical Device Vigilance system is the mechanism by which adverse event reporting is managed and monitored in the European Union.

In some cases, we rely on our non-U.S. distributors to obtain premarket approvals, complete product registrations, comply with clinical trial requirements, and complete those steps that are customarily taken in the applicable jurisdictions to comply with governmental and quasi-governmental regulation. In the future, we expect to continue to rely on distributors in this manner in those countries where we continue to market and sell our products through them.

In Japan, the Ministry of Health, Labor and Welfare (MHLW) regulates medical devices through the Pharmaceutical Affairs Law, which was reformed effective April 1, 2005. The revisions to Japan’s regulations have resulted in longer lead times for product registration.

There can be no assurance that new laws or regulations or new interpretations of laws and regulations regarding the release or sale of medical devices will not delay or prevent sale of our current or future products.

Third-Party Reimbursement

United States

Healthcare providers that purchase medical devices generally rely on third-party payors, including the Medicare and Medicaid programs and private payors (such as indemnity insurers, employer group health insurance programs, and managed care plans) to reimburse all or part of the cost of those products. As a result, demand for our products is and will continue to be dependent in part on the coverage and reimbursement policies of these payors. The manner in which reimbursement is sought and obtained varies based upon the type of payor involved and the setting in which the product is furnished and utilized. Furthermore, payments from Medicare, Medicaid, and other third-party payors are subject to legislative and regulatory changes and are susceptible to budgetary pressures.

[Table of Contents](#)

In the United States, third-party payors generally pay healthcare providers directly for the procedures they perform and in certain instances for the products they use. Alternatively, third-party payors may reimburse patients for all or part of the charges that patients pay for procedures and the products used in connection with those procedures. In either case, our sales volumes depend on the extent to which third-party payors cover our products and the procedures in which they are used. In general, a third-party payor only covers a medical product or procedure when the plan administrator is satisfied that the product or procedure is medically necessary because it improves health outcomes, including quality of life or functional ability, in a safe and cost-effective manner. Even if a device has received clearance or approval for marketing by the FDA, there is no assurance that third-party payors will cover the cost of the device and related procedures in which the device is used.

In many instances, third-party payors cover the procedures performed using our products using price fee schedules that do not vary reimbursement to reflect the cost of the products and equipment used in performing those procedures. In other instances, payment or reimbursement is separately available for the products and equipment used, in addition to payment or reimbursement for the procedure itself. Even if coverage is available, third-party payors may place restrictions on the circumstances in which they provide coverage or may offer reimbursement that is not sufficient to cover the cost of our products. Many of the products that compete with ours are less expensive. Therefore, although coverage may be available for our products and the related procedures, the levels of approved coverage may not be sufficient to justify using our products instead of those of competitors.

Third-party payors are increasingly challenging the prices charged for medical products and procedures and, where a reimbursement model is used, introducing maximum reimbursement limits for the procedures they cover. We believe that the minimally invasive procedures in which most of our products are used are generally less costly than open surgery because they frequently result in shorter hospitalization times. However, there is no guarantee that these procedures will be reimbursed. Third-party payors may not consider these minimally invasive procedures to be cost-effective and therefore refuse to authorize coverage.

Finally, the advent of contracted fixed rates per procedure has made it difficult to receive separate reimbursement for disposable products, even if the use of these products improves clinical outcomes. In addition, many third-party payors are moving to managed care systems in which providers contract to provide comprehensive healthcare for a fixed cost per person. Managed care providers often attempt to control the cost of healthcare by authorizing fewer elective surgical procedures. Under current prospective payment systems, such as the diagnosis-related group system and the hospital out-patient prospective payment system, both of which are used by Medicare and in many managed care systems used by private third party payors, the reimbursement for our products will be incorporated into the overall reimbursement of a procedure, and there will be no separate reimbursement for our products. As a result, we cannot be certain that hospital administrators and physicians will purchase our products.

If hospitals and physicians cannot obtain adequate reimbursement for our products or the procedures in which they are used, our business, financial condition, and results of operations could suffer a material adverse impact .

Non-U.S.

Our success in non-U.S. markets will depend largely upon the availability of reimbursement from the third-party payors through which healthcare providers are paid in those markets. Reimbursement and healthcare payment systems in non-U.S. markets vary significantly by country. The main types of healthcare payment systems are government sponsored healthcare and private insurance. As in the United States, reimbursement is subject to legislative and regulatory changes and is susceptible to budgetary pressures. Reimbursement approval must be obtained individually in each country in which our products are marketed. Outside the United States, we generally pursue reimbursement approval in those countries in which we sell directly to the hospital. In other markets, we generally rely on the distributors who sell our products to obtain reimbursement approval in those countries in which they will sell our products. There can be no assurance that reimbursement approval will be received.

Fraud and Abuse Laws

We may directly or indirectly be subject to various federal and state laws 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, 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.

Employees

We had 227 full-time employees at December 31, 2009. Of these employees, 91 were in manufacturing and research and development, 92 were in sales and marketing, 20 were in clinical, regulatory, and quality assurance, and 24 were in general and administrative. We have never had a work stoppage.

At our facility in Brindisi, Italy, we have 29 employees who are covered by one or more collective bargaining agreements negotiated with a union-authorized employee representative (*Rappresentanza Sindacale Unitaria*) and the two unions (FEMCA-CISL and FILCEA-CGIL) that represent employees at this location. In February 2010, these unions declared a *Stato di Agitazione*, which is a method in Italy by which an employee union indicates to an employer that the union membership may be considering the initiation of a work stoppage, work slowdown or other direct action.

Financial Information by Business Segment and Geographic Data

We operate in one reportable industry segment: the design, marketing, sales and technical support of medical devices and implants for the treatment of peripheral vascular disease. Our chief operating decision maker is our chief executive officer. Our chief executive officer reviews financial information, accompanied by information about revenue by geographic region for purposes of allocating resources and evaluating financial performance. The information included in Note 14 of the Notes to Consolidated Financial Statements is hereby incorporated by reference.

Customers

Our sales are not dependent on any single customer or distributor, and we continue to expand our distribution channel worldwide through direct and indirect sales forces.

Item 1A. Risk Factors

The following important factors, among others, could cause our actual operating results to differ materially from those indicated or suggested by forward-looking statements made in this Form 10-K or presented elsewhere by management from time to time. Investors should carefully consider the risks described below before making an investment decision. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and investors may lose all or part of their investment.

Risks Related to Our Business

We may experience significant fluctuations in our quarterly and annual results.

Fluctuations in our quarterly and annual financial results have resulted and will continue to result from numerous factors, including:

- strategic actions by us, such as acquisitions of additional businesses, products, or technologies;
- costs incurred in connection with the termination of contractual and other relationships, including distributorships;
- changes in the mix of products we sell;
- the relocation of manufacturing operations and other strategic restructuring;
- the discontinuation of a product line or other revenue generating activity, such as private label manufacturing;
- the expiration or exhaustion of deferred tax assets such as net operating loss carry-forwards;
- increased product and price competition;
- seasonality in the sales of our products;
- the loss of any significant customer, especially in regard to any product that has a limited customer base; and
- effects of domestic and foreign economic conditions and exchange rates on our industry and/or customers.

These factors, some of which are not within our control, may cause the price of our common 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 always meaningful and should not be relied upon as an indication of our future performance.

We may not maintain our recent profitability

As of December 31, 2009, we had an accumulated deficit of approximately \$14.6 million. While we reported positive operating and net income for the year ended December 31, 2009, we had an operating and a net loss for the year ended December 31, 2008 and 2007. There can be no assurance we will achieve significant net sales gains or maintain either operating or net profitability in the future. Our recent operating and net profitability result in part from extensive operating expense reduction. Control of operating expenses may need to be maintained in order to maintain or improve operating profitability, and decreased investment levels may inhibit future growth in net sales and earnings. We intend to increase operating expenses in 2010 in areas such as sales

[Table of Contents](#)

and marketing, research and development, and clinical and regulatory affairs. Additionally, our ability to maintain and increase profitability will be influenced by many factors, including:

- the level and timing of future sales, manufacturing costs and operating expenditures;
- market acceptance of our new products;
- the productivity of our direct sales force and distributors;
- fluctuations in foreign currency exchange rates;
- the cost of our clinical studies;
- our ability to successfully acquire and develop competitive products;
- our ability to successfully integrate acquired businesses, products, or technologies;
- the impact on our business of competing products, technologies, and procedures;
- our ability to obtain regulatory approvals for our products in new markets;
- market and regulatory developments; and
- the cost of intellectual property challenges, if any.

Fluctuations in foreign currency exchange rates could result in declines in our reported sales and earnings.

For the full year ended December 31, 2009, 42% of net sales were derived from sales occurring outside of the United States. Because the majority of our sales outside of the United States are denominated in local currencies, our reported sales and earnings are subject to fluctuations in foreign exchange rates. We cannot predict the impact of foreign currency fluctuations, and foreign currency fluctuations in the future may adversely affect our sales and earnings. At present, we manufacture very few of our products outside the United States and we rarely engage in hedging transactions to protect against uncertainty in future exchange rates between particular foreign currencies and the U.S. dollar. Over recent months, the value of foreign currencies against the U.S. dollar has fluctuated dramatically. For example, the value of the euro against the U.S. dollar declined by approximately 5% during the first two months of 2010. A decline in the value of the euro against the U.S. dollar could be expected to have a negative impact on our revenue and earnings growth as euro-denominated revenues and earnings, if any, would be translated into U.S. dollars at a reduced value.

We may acquire businesses and assets in the future. We may experience difficulties in completing the integration of these acquisitions into our business, or we may not realize the anticipated benefits of these acquisitions.

In order to expand our product offerings, we have completed ten acquisitions since 1998, and a key part of our strategy is to acquire additional businesses, products, or technologies in the future. Our growth strategy depends in part upon our ability to identify, negotiate, complete, and integrate suitable acquisitions and develop products from uncommercialized intellectual property that we acquire. If we are unable to complete acquisitions on satisfactory terms, our growth objectives could be negatively affected.

Even if we complete acquisitions, we may experience:

- difficulties in integrating any acquired companies, personnel, and products into our existing business;
- difficulties in integrating manufacturing operations into our existing business or successfully replicating manufacturing processes at new manufacturing facilities;
- difficulties or delays in transitioning clinical studies or unfavorable results from such clinical studies;
- difficulties or delays in commercializing intellectual property that we acquire;

[Table of Contents](#)

- diversion of our management's time and attention from other business concerns;
- challenges resulting from limited or no prior experience in new markets or countries we may enter;
- higher costs of integration than we anticipated;
- difficulties in retaining key employees of the acquired business who are necessary to manage these acquisitions;
- difficulties in acquiring the rights to and protecting intellectual property; or
- difficulties if the acquired company is remote or inconvenient to our Burlington, Massachusetts, headquarters.

For any of these reasons or as a result of other factors we may not realize the anticipated benefits of acquisitions and our operating results may be harmed.

For example, following our acquisition of Biomateriali S.r.l. in December 2007, we were informed by Sorin Biomedica SpA, that Sorin would be reducing its purchases under an existing private label manufacturing program with Biomateriali. We estimate that this change in purchase volume resulted in a 22% reduction, approximately, in annual net sales of Biomateriali compared to annual net sales for the year preceding the acquisition. We can provide no assurance that similar changes in purchasing volume will not occur in the future in regard to Sorin or any other private label customer of, or distributor for, a company that we acquire.

We also may experience other difficulties related to our acquisitions. For example, the products that we have acquired may need to be improved in order to gain broader market acceptance or may not compete effectively with existing products. We may have limited experience with certain technologies underlying the acquired products. There can be no assurance that we will be successful developing the desired product improvements in a timely manner, if at all.

We could also discover deficiencies withheld from us due to fraud or otherwise not uncovered in our due diligence prior to the acquisition, including deficiencies in internal controls, data adequacy and integrity, product quality, and regulatory compliance, as well as undisclosed and product liabilities, any of which could result in us becoming subject to penalties or other liabilities.

An acquisition may require debt or equity financing. Equity financing, if available, may be dilutive to our stockholders. If we raise additional capital through the issuance of debt, this debt will be senior to our outstanding shares of capital stock upon our liquidation, and interest payments to a lender may divert our capital away from alternative spends or investments.

Any of these difficulties could negatively impact our ability to realize the intended and anticipated benefits that we currently expect from our acquisitions and could harm our financial condition and results of operations.

If we are unable to expand our product offerings, we may not achieve our growth objectives and our results of operations could suffer.

We may not be able to compete effectively with our competitors unless we can keep pace with existing or new products and technologies in the vascular device market. Our success in developing and commercializing new products and new versions of our existing products is affected by our ability to:

- identify in a timely manner new market trends and customer needs;
- keep pace with technological changes and industry standards;
- obtain regulatory clearance or approval of new products and technologies;

[Table of Contents](#)

- successfully develop cost-effective manufacturing processes for such products;
- commercially introduce such products and technologies; and
- achieve market acceptance.

If we are unable to expand our product offerings, we may not achieve our growth objectives and our results of operations could suffer.

We face intense competition from other companies, technologies, and alternative medical procedures and we may not be able to compete effectively.

The markets in which we compete are highly competitive, subject to change, and significantly affected by new product introductions and other activities of industry participants. Although no one company competes against us in all of our product lines, a number of manufacturers of peripheral vascular devices have substantially greater capital resources, larger customer bases, broader product lines, larger sales forces, greater marketing and management resources, larger research and development staffs, and larger facilities than ours; have established reputations with our target customers; and have developed worldwide distribution channels that are more effective than ours. Our competitors could elect to devote additional resources to the markets in which we currently enjoy less competition. Also, although we currently have leading market positions in the markets for some of our products, this is not true for the markets for all of our products, in particular our endovascular products. We have from time to time experienced difficulties competing against very large companies. For example, we believe that intense competition from Medtronic, W. L. Gore and Cook has been a significant factor in inhibiting the adoption of our TAArget Thoracic Stent Graft in European markets.

Recent industry consolidation could make the competitive environment more difficult for smaller companies like ours. Because of the size of the vascular disease market opportunity, competitors and potential competitors have dedicated, and we believe will continue to dedicate, significant resources to aggressively promote their products. Also, new product developments that could compete with us more effectively are likely because the vascular disease market is characterized by extensive research efforts and technological progress. Competitors may develop technologies and products that are safer, more effective, easier to use, less expensive, or more readily accepted than ours. Their products could make our technology and products obsolete or noncompetitive. Our competitors may also be able to achieve more efficient manufacturing and distribution operations than we can. In addition, many of our products face competition from alternative procedures that utilize a different kind of medical device that we do not currently sell. Increased competition could also result in price reductions and loss of market share, any of which could result in lower revenues and reduced gross profits.

If we fail to convert additional countries or products from distributor sales to direct sales, or encounter difficulties in effecting such conversions, our results of operations could suffer.

We intend to convert select countries and products from distributor sales to direct sales, which could result in disruptions in our sales. This transition may also have an adverse effect on our cash flow from operations because distributors, unlike direct sales personnel, pay us for inventory that they stock for later sale. In addition, switching to a direct sales force may subject us to longer customer collection times and larger bad debt expense, since we would be required to collect customer payments directly rather than through a distributor. Also, our distribution agreements are typically exclusive with terms of up to five years. These agreements may temporarily constrain our ability to convert certain countries or products from a distributor to a direct sales model. Further, even where the payment of compensation is not required by contract or local law, it may be prudent to make such a payment in order to assure a successful market transition. For example, in October 2007 we entered into an agreement with our exclusive distributor in Italy to end its distribution of our products in January 2008. Among the payments made under this agreement were consulting and transition services fees. These payments were not required under an existing contract or Italian law. These amounts were paid in part because the absence of cooperation by a distributor may result in the sudden erosion of our customer base, which could materially harm

[Table of Contents](#)

our ability to sell our product in that country. If we elect to cooperate with a distributor, that distributor may require us to repurchase inventory that we had previously sold to that distributor, in which event we may need to make a corresponding negative adjustment to net sales.

Following termination of any distribution relationship, we may encounter difficulties in transitioning to a direct-sales model in any country in question. It may take us longer than expected to find sufficient qualified sales personnel to establish an effective sales force, which could negatively impact projected sales. If a distributor sold our products through a network of sales agents, rather than exclusively through its own personnel, we may not be able to establish relationships with all members of that network, temporarily limiting our access to the existing market. Similarly, failure to maintain or quickly re-establish a distributor's close relationships with the physicians who use our products could cause a drop in sales. On the logistical side, if a distributor entered into an agreement with a customer relating to sales of our products or successfully completed a customer's internal approval process, it may be difficult or impossible to assign the distributor's rights under such agreements or approvals, and sales to that customer may be delayed until a new agreement is entered or a new approval is obtained. The transition to a direct sales model may also require us to incur additional expenses and meet regulatory requirements that were previously the responsibility solely of the distributor. As a result of these risks, there can be no assurance that we will be successful in transitioning to a direct sales model in the countries or for the products that we select, and difficulties that we encounter in this transition could negatively affect our business.

Current economic instability may harm our operating results.

Financial markets and the economies in the United States and internationally have recently experienced disruption and volatility and conditions could worsen. As a result, the economic environment may, among other things:

- create downward pressure on the pricing of our products;
- affect the collection of accounts receivable;
- increase the sales cycle for certain of our products;
- slow the adoption of new technology;
- adversely affect our customers, causing them to reduce spending; and
- adversely affect our suppliers, which could disrupt our ability to produce our products.

Any of these conditions could harm our operating results and liquidity.

If we are unable to increase our selling prices to customers, our rate of net sales growth might be reduced and our operating results could suffer.

In the fiscal years ended December 31, 2008 and 2009, a material portion of our increases in net sales was driven by higher average selling prices to our hospital customers across several of our product lines, particularly with respect to sales occurring in the United States. We have in the past been able to rely upon our intellectual property position, our well-known brands, our established reputation in the vascular surgery device marketplace, and, in some cases, an absence of competition, to implement price increases. If healthcare spending is reduced, particularly in the United States, in response either to government-enacted healthcare reform or to general economic conditions, if the reimbursement rates for the medical procedures in which our products are used are reduced or constrained, or if competitors introduce lower-priced products of comparable safety and efficacy, we may become unable to implement further increases in the selling prices of our products. If we become unable to raise selling prices, it might reduce our rate of net sales growth, which could harm our operating results.

[Table of Contents](#)

If there is a disruption in the supply of products that we distribute, or if our relationships with their manufacturers are impaired, our net sales and results of operations would be harmed.

We are party to an agreement with Endologix, Inc. to distribute the Powerlink System in several European countries, including Germany, France, and the United Kingdom. We are party to agreements with Neovasc Inc. to distribute the XenoSure Biologic Vascular Patch in the United States and most of Europe. If we are unable to market these products successfully, or if our agreement with either manufacturer is terminated early, our net sales and results of operations would likely suffer. In each case, if we do not meet our minimum purchase requirements under our agreement, and do not cure this deficiency, the agreement may be terminated by the manufacturer. In the case of Endologix we have not always met these performance requirements. There can be no assurance that our minimum purchase obligations will not exceed the market demand for the Powerlink System, which is dependent upon many risks outside our control. Were Endologix to declare a default under our agreement with them, we would be permitted to cure the performance requirement by purchasing additional inventory in order to avoid a termination, but these required purchases may be material in amount, reducing our cash reserves.

In addition, even if we market our distributed products successfully, if the manufacturer is unable to produce enough of its products to meet our demands, we may not be able to meet our customers' demands, and our net sales and results of operations may suffer.

Some of our devices have been recently introduced into the market and may not achieve market acceptance, which could adversely affect our business.

Some of our devices have been recently introduced into the market, and we cannot assure you that they will achieve market acceptance. The same is true of new devices that we may acquire or internally develop in the future. The marketing of our products requires a significant amount of time and expense in order to identify and develop relationships with the physicians who may use our products, invest in training and education with these physicians, and employ a sales force that is large enough to interact with the targeted physicians, with no assurance of success. In some cases, our devices may face competition from devices marketed by our competitors, and our customers may not prefer our devices. In other cases, our devices may be used in new procedures and techniques, and if physicians do not adopt these procedures and techniques, demand for these devices would fail to develop. For example, in 2004 we launched our InvisiGrip Vein Stripper, which has not achieved widespread market adoption because of competing products and techniques. If our products do not gain market acceptance, our business could be adversely affected.

If we are unable to manage the anticipated growth of our business, our financial condition and operating results could be adversely affected.

The growth that we have experienced, and may experience in the future, will continue to provide challenges to our organization. For example, since 1998 we have completed ten acquisitions, and we expect to pursue additional acquisitions in the future. As our operations expand, both in terms of scope and geographic coverage, we expect that we will need to manage additional relationships with various partners, suppliers, and other organizations. We also will need to manage the corresponding growth of our manufacturing operations. Our ability to manage our operations and growth requires us to continue to improve our operational, financial, and management controls and reporting systems and procedures, and may in the future require us to transition to new enterprise management software. Such growth could place a strain on our administrative and operational infrastructure. We may not be able to make improvements to our management information and control systems in an efficient or timely manner, and we may discover deficiencies in existing systems and controls. If we cannot scale and manage our business appropriately, our anticipated growth may be impaired and our financial results could suffer.

[Table of Contents](#)

The risks inherent in operating internationally and the risks of selling and shipping our products and of purchasing our components and products internationally may adversely impact our net sales, results of operations, and financial condition.

We derive a significant portion of our net sales from operations in markets outside of the United States and Canada. For the full year ended December 31, 2009, 42% of our net sales were derived from our operations outside of the United States and Canada. Our international sales operations expose us and our representatives, agents, and distributors to risks inherent in operating in foreign jurisdictions. These risks include:

- fluctuations in foreign currency exchange rates;
- the imposition of additional U.S. and foreign governmental controls or regulations, including export licensing requirements, duties and tariffs, and other trade restrictions;
- the risk of non-compliance with the Foreign Corrupt Practices Act by our sales representatives or our distributors;
- the imposition of U.S. and/or international sanctions against a country, company, person, or entity with whom we do business that would restrict or prohibit continued business with the sanctioned country, company, person, or entity;
- a shortage of high-quality sales personnel and distributors;
- loss of any key personnel who possess proprietary knowledge, or who are otherwise important to our success in certain international markets;
- changes in third-party reimbursement policies that may require some of the patients who receive our products to directly absorb medical costs or that may necessitate the reduction of the selling prices of our products;
- the imposition of restrictions on the activities of foreign agents, representatives, and distributors;
- scrutiny of foreign tax authorities, which could result in significant fines, penalties, and additional taxes being imposed on us;
- pricing pressure that we may experience internationally;
- laws and business practices favoring local companies;
- longer payment cycles;
- difficulties in enforcing agreements and collecting receivables through certain foreign legal systems;
- difficulties in enforcing or defending intellectual property rights;
- exposure to different legal and political standards; and
- political, economic, and/or social instability.

We cannot assure you that one or more of these factors will not harm our business. Any material decrease in our international sales would adversely impact our net sales, results of operations, and financial condition.

We depend on single- and limited-source suppliers for some of the components to our products, as well as for acquired products that have not been transitioned to in-house manufacture, and if any of those suppliers are unable or unwilling to supply them on acceptable terms, it could limit our ability to deliver our products to our customers on a timely basis or at all.

We rely on single- and limited-source suppliers for some of our important product components, as well as for products we have acquired that are not manufactured in-house. For example, we obtain from a third-party supplier a key component used in our TAArget Thoracic Stent Graft and UniFit Abdominal Stent Graft.

[Table of Contents](#)

Similarly, the EndoRE remote endarterectomy product line we added as a result of the Vascular Architects acquisition is manufactured for us by third-party suppliers. There are relatively few, or in some cases no, alternative, validated sources of supply for these components and products. We do not have supply agreements with most of these suppliers, and instead place orders on an as-needed basis. Most of these suppliers could discontinue the manufacture or supply of these components or products at any time. We do not carry a significant inventory of these components and products. Identifying and qualifying additional or replacement suppliers, if required, may not be accomplished quickly or at all and could involve significant additional costs. Any supply interruption from our vendors or failure to obtain additional vendors for any of the components used to manufacture our products would limit our ability to manufacture our products, may result in production delays and increased costs, and may limit our ability to deliver products to our customers. If we are unable to identify alternate sources of supply for the components, we would have to modify our products to use substitute components, which may cause delays in shipments, increase design and manufacturing costs, and increase prices for our products. We cannot assure you that any such modified products would be as effective as the predecessor products, or that such modified products would gain market acceptance. This could lead to customer dissatisfaction and damage to our reputation.

Any disruption in our manufacturing facilities could harm our results of operations.

Our principal worldwide executive, distribution, and manufacturing operations are located at a 27,098 square foot leased facility and a nearby 7,477 square foot leased facility located in Burlington, Massachusetts. We also manufacture our AlboGraft Vascular Graft product line and perform select other manufacturing processes in a 16,146 square foot leased facility in Brindisi, Italy. These facilities and the manufacturing equipment we use to produce our products would be difficult to replace and could require substantial lead-time to repair or replace in the event of a natural or man-made disaster. In such event, we could not shift production to alternate manufacturing facilities, and we would be forced to rely on third-party manufacturers. Although we possess insurance for damage to our property and the disruption of our business from casualties, such insurance may not be sufficient to cover all of our potential losses, including potential damage to our reputation, and may not continue to be available to us on acceptable terms, or at all.

At our facility in Brindisi, Italy, nearly all of our employees are covered by one or more collective bargaining agreements negotiated with a union-authorized employee representative (*Rappresentanza Sindacale Unitaria*) and the two unions (FEMCA-CISL and FILCEA-CGIL) that represent employees at this location. In February 2010, these unions declared a *Stato di Agitazione*, which is a method in Italy by which an employee union indicates to an employer that the union membership may be considering the initiation of a work stoppage, work slowdown or other direct action. If these unions initiate a work stoppage, the supply of our AlboGraft Vascular Graft may be interrupted, we may not be able to meet our customers' demands for the product, and our net sales and results of operations may suffer.

Our primary focus on the needs of vascular surgeons could harm our business if interventional cardiologists and interventional radiologists perform a greater percentage of new procedures that replace those procedures traditionally performed by vascular surgeons, or if vascular surgeons increasingly specialize in procedures for which we do not sell devices.

The treatment of peripheral vascular disease is increasingly shifting from open vascular surgery to minimally invasive endovascular procedures. We market and sell our products primarily to vascular surgeons, who in addition to performing traditional open surgical procedures, in growing numbers also perform minimally invasive, image-guided interventional procedures for peripheral vascular disease. However, vascular surgeons may not adopt these procedures in the numbers we expect and instead these procedures may be largely performed by interventional cardiologists and interventional radiologists. Many of our competitors have focused their sales efforts on these interventionalists. If interventional cardiologists and interventional radiologists perform a greater percentage of these new procedures than we expect, our net sales may decline.

[Table of Contents](#)

Moreover, demographic trends and other market factors, such as reimbursement rates, are driving vascular surgeons in the United States and potentially in other markets to increasingly specialize in certain kinds of procedures, such as endovascular therapies, the creation and maintenance of dialysis access sites, and the treatment of varicose veins. Sometimes these physicians will discontinue performing other vascular procedures. If this trend continues, it could lead to the fragmentation of our customer base, which would reduce cross-selling opportunities and the efficiency of each sales call by our sales representatives, which in turn would negatively impact our business.

We depend on our senior management team and other key scientific, sales, and technical personnel, and if we are unable to retain them or recruit additional qualified personnel we may not be able to manage our operations and meet our strategic objectives.

We depend on the continued services of our senior management team and other key scientific, sales, and technical personnel, as well as our ability to continue to attract and retain additional highly qualified personnel. Our ability to retain our skilled labor force and our success in attracting and hiring new skilled employees will be a critical factor in determining whether we will be successful in the future. Each of our key employees may terminate his or her employment with us at any time. The loss of any of our senior management team or key employees could harm our business. We compete for such personnel with other companies, academic institutions, government entities, and other organizations. We may not be able to meet our future hiring needs or retain existing personnel on acceptable terms. We could face significant challenges and risks in hiring, training, managing, and retaining engineering and sales employees. Any loss or interruption of the services of our other key personnel could also significantly reduce our ability to effectively manage our operations and meet our strategic objectives, because we cannot assure you that we would be able to find an appropriate replacement should the need arise. We maintain life insurance payable to us on our Chairman and Chief Executive Officer, George W. LeMaitre, but not on our other key personnel.

If we do not maintain our relationships with our physician customers, our growth may be limited and our business could be harmed.

Physicians typically influence the medical device purchasing decisions of the hospitals and other healthcare institutions in which they practice. Consequently, our relationships with our physician customers are critical to our continued growth. We believe that these relationships are based on our long-standing reputation and presence in the market for peripheral vascular devices, the quality of our product offerings and clinical outcomes, our marketing efforts and our presence at medical society meetings. Any actual or perceived diminution in our reputation or the quality of our products or our failure or inability to maintain these other efforts could damage our current relationships, or prevent us from forming new relationships, with physicians and cause our growth to be limited and our business to be harmed.

Our lack of customer purchase contracts makes it difficult to predict sales and plan manufacturing requirements, which could lead to lower net sales, higher expenses, and reduced margins.

We generally do not have long-term purchase contracts with our hospital customers, who typically order products on an as-needed basis. As a result, it is difficult to accurately forecast our component and product requirements. Our manufacturing and operating expenses are largely based on anticipated sales volume, and a significant portion of these expenses is and will continue to be fixed. We must plan production and order product components and third-party manufactured products several months in advance of customer orders. In addition, lead times for product components and third-party manufactured products that we order vary significantly and depend on factors such as the specific supplier and demand for each component at any given time. These factors expose us to a number of risks, such as the following:

- if we overestimate our requirements, or experience shortages, we may be obligated to carry more inventory than we need, which could result in write-offs of excess or obsolete inventory;

[Table of Contents](#)

- if we underestimate our requirements, we may have an insufficient product component inventory, which could disrupt manufacturing of our products and cause delays in shipments and net sales; and
- if we experience shortages of product components from time to time, which could delay the manufacturing and shipping of our products.

If any of the foregoing occurs, it could lead to lower net sales, higher expenses, and reduced margins.

The use or misuse of our products may result in injuries that lead to product liability suits, which could be costly to our business.

Although we offer training for physicians in the use of some of our products, we do not require that physicians be trained in the use of our products. Not requiring training specific to the use of our devices may expose us to greater risk of product liability if injuries occur during a procedure involving our products. In addition, if demand for our products continues to grow, less skilled surgeons will likely use the devices, potentially leading to an increased incidence of patient injury and an increased risk of product liability.

If our products are defectively designed, manufactured, or labeled, contain defective components, or are misused, or if our products are found to have caused or contributed to injuries or death, we may become subject to costly litigation by our customers or their patients. We are from time to time involved in product liability claims. Product liability claims could divert management's attention from our core business, be expensive to defend, and result in sizable damage awards against us. Claims of this nature may also adversely affect our reputation, which could damage our position in the market and subject us to product recalls.

We cannot assure you that our product liability insurance coverage will be sufficient to satisfy any claim made against us. Further, we may not be able to maintain the same level of coverage, and we may not be able to obtain adequate coverage at a reasonable cost and on reasonable terms, if at all. Any product liability claim brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing coverage in the future. Additionally, if any such product liability claim or series of claims is brought against us for uninsured liabilities or is in excess of our insurance coverage, our business could be harmed.

The adoption of healthcare reform in the United States may harm our business, results of operations and/or financial condition.

The United States has recently made significant reforms to the U.S. healthcare system, and further reforms are still under consideration in Congress. These reforms include provisions that, among other things, may impose new and/or increased taxes and reduce and/or limit Medicare reimbursement. In particular, the law signed by President Obama on March 23, 2010 requires the medical device industry to subsidize healthcare reform in the form of a substantial annual excise tax on medical device sales commencing in 2013. We cannot predict what healthcare initiatives will be finally implemented. Many of the proposed reforms could reduce medical procedure volumes, impact the demand for our products or the prices at which we sell our products, and/or increase our cost of doing business.

We rely on our independent distributors to market and sell our products in select markets outside of the United States and Canada.

Sales of our products through independent distributors represented 8% of our net sales for the year ended December 31, 2009. Our success in these markets depends largely upon marketing arrangements with distributors, in particular their sales and service expertise and relationships with their respective customers in the marketplace. Although we intend to replace some of these distributors with a direct sales force, this will take time and we may maintain a distribution model in some markets. We do not control our distributors and they may not be successful in implementing our marketing plans.

[Table of Contents](#)

Many of our distributors initially obtain and maintain foreign regulatory approval for sale of our products in their respective countries. We do not have long-term contracts with many of our distributors, and our distributors may terminate their relationships with us on little or no notice. In addition, some of our distributors are not required to purchase any minimum amount of products from us, may sell products that compete with ours or devote more efforts to selling other products, and may stop selling our products at any time. If we lose any of our significant distributors, if we fail to recruit and retain additional skilled distributors in these locations, or if our distributors devote more effort to selling products other than ours, our operations could be harmed. We have experienced turnover with some of our distributors in the past that has impacted our short-term financial results while we transitioned to new distributors. Similar occurrences could happen in the future.

We may not maintain positive cash flow from operations and, as a result, we may require additional capital. Failure to attract additional capital on acceptable terms could impair our growth.

We may require additional capital to execute our strategies and further expand our business. In particular, we depend on access to capital to acquire products and technologies that complement our existing product lines. If our cash reserves, together with cash available under our credit facility and cash generated internally, are insufficient to fund our operations or our capital requirements, we will require additional debt or equity financing. Equity financing, if available, may be dilutive to our stockholders. If we raise additional capital through the issuance of debt, this debt will be senior to our outstanding shares of capital stock upon our liquidation. The availability of such financing depends in large measure on capital markets and liquidity factors over which we can exert little control. Financing may not be available or, if available, may not be available on terms satisfactory to us and could result in significant stockholder dilution. In addition, covenants in debt financing arrangements may restrict our ability to operate our business or obtain additional debt financing. These covenants may also require us to attain certain levels of financial performance and we may not be able to do so; any such failure may result in the acceleration of such debt and the foreclosure by our creditors on the collateral we used to secure the debt. We may also elect to raise additional funds through collaboration, licensing, marketing, or similar arrangements, and these arrangements may require us to relinquish valuable rights to our products or proprietary technologies, or grant licenses that are not favorable to us. If we fail to obtain sufficient additional capital in the future, we could be forced to curtail our growth strategy by reducing or delaying capital expenditures and acquisitions, delaying or postponing our product development efforts (including clinical studies), selling assets, restructuring our operations, or refinancing our indebtedness.

Our assumptions about the market for our products may not be correct.

We are focused on the market for devices used to treat peripheral vascular disease. We believe that demographic trends point towards an increase in the need for our products. However, the projected demand for our products could materially differ from actual demand if our assumptions regarding these trends and acceptance of our products by the medical community prove to be incorrect or do not materialize or if drug therapies gain more widespread acceptance as a viable alternative treatment, which in each case could adversely affect our business prospects and profitability.

From time to time we may become subject to tax audits or similar proceedings, and as a result we may owe additional taxes, interest, and penalties in amounts that may be material.

We are subject to income taxes in many countries, jurisdictions, and provinces, including the United States. In determining our global provision for income taxes, we are required to exercise judgment. Regularly, we make estimates where the ultimate tax determination is uncertain. While we believe our estimates are reasonable, we cannot assure you that the final determination of any tax audit or tax-related litigation will not be materially different from that reflected in our historical income tax provisions and accruals.

In addition, we are subject to sales, use, and similar taxes in many countries, jurisdictions, and provinces, including those states in the United States where we maintain a physical presence or have a substantial nexus.

[Table of Contents](#)

These taxing regimes are complex. For example, in the United States, each state and local taxing authority has its own interpretation of what constitutes a sufficient physical presence or nexus to require the collection and remittance of these taxes. Similarly, each state and local taxing authority has its own rules regarding the applicability of sales tax by customer or product type. We employ a variety of strategies from time to time with respect to our international operations. There can be no assurance that these strategies will be accepted by the relevant taxing authorities.

We have reviewed the tax positions taken, or to be taken, in its tax returns for all tax years currently open to examination by a taxing authority. As of December 31, 2009, the total amount of unrecognized tax benefits, that is the aggregate tax effect of differences between tax return positions and the benefits recognized in our financial statements, was approximately \$299,000. The assessment of additional taxes, interest, and penalties as a result of audits, litigation, or otherwise, could be materially adverse to our current and future results of operations and financial condition.

Risks Related to the Regulatory Environment

Our business is subject to complex, costly, and burdensome regulations. We could be subject to significant penalties if we fail to comply.

The production and marketing of our products and our ongoing research and development and clinical trial activities are subject to extensive regulation and review by numerous governmental authorities both in the United States and abroad. U.S. and foreign regulations applicable to medical devices are wide-ranging and govern, among other things, the testing, marketing, and premarket clearance or approval of new medical devices, in addition to regulating manufacturing practices, reporting, promotion and advertising, importing and exporting, labeling, and record-keeping procedures.

Our failure to comply with applicable regulatory requirements could result in governmental agencies or a court taking action, including any of the following:

- issuing public warning letters to us;
- imposing fines and penalties on us;
- issuing an injunction preventing us from manufacturing or selling our products;
- bringing civil or criminal charges against us;
- delaying the introduction of our new products into the market;
- ordering a recall of, or detaining or seizing, our products; or
- withdrawing or denying approvals or clearances for our products.

If any or all of the foregoing were to occur, our business, results of operations, and reputation could suffer.

If we are not successful in obtaining and maintaining clearances and approvals from governmental agencies, we will not be able to sell our products, and our future growth will be significantly hampered.

Our products require premarket clearance or approval in the United States and the CE Mark or other approvals in foreign countries where they are sold. Each medical device that we wish to market in the United States generally must receive either 510(k) clearance, unless it is exempt, or approval of a premarket application, or PMA, from the FDA before the product can be marketed or sold. Either process can be lengthy and expensive. The FDA's 510(k) clearance procedure usually takes from three to twelve months from the date the FDA receives the application, but may take significantly longer. Although 510(k) clearances have been obtained for all of our current products that require clearances, these clearances may be revoked by the FDA if safety or

[Table of Contents](#)

effectiveness problems develop with the devices. Our new products or significantly modified marketed products could be denied 510(k) clearance and required to undergo the more burdensome PMA approval process if they are not found to be substantially equivalent.

The PMA approval process is much more costly, lengthy, and uncertain than the premarket notification process. It generally takes from six months to three years from the date the application is submitted to, and filed with, the FDA, and may take even longer. Achieving premarket approval typically requires extensive clinical trials and may require the filing of numerous amendments with the FDA over time. We do not have significant experience in obtaining PMA approval for our products.

Our TAArget and UniFit products must receive PMA approval before being commercially distributed in the United States. To successfully obtain PMA approval of our TAArget and UniFit devices and other devices that we may develop or acquire that are not approved for sale in the United States, we may need to develop greater regulatory and clinical study expertise than we currently possess. Our inexperience in these areas may cause significant delays in or otherwise harm our ability to successfully complete the complex undertaking of obtaining regulatory approval for these devices. We continue to evaluate the potential financial benefits and costs of our clinical studies and the products being evaluated in them. If we determine that the costs associated with obtaining regulatory approval of a product exceed the potential financial benefits of that product, or if the projected development timeline is inconsistent with our investment horizon, we may choose to discontinue a clinical study and/or the development of a product. We cannot assure you that we will ever obtain PMA approval for our TAArget or UniFit devices or any other devices that we attempt to bring to market in the United States.

In May 2008, we submitted an investigational device exemption (IDE) application to the FDA to begin a feasibility study of our TAArget Thoracic Stent Graft, which we call the ENTRUST Trial. On December 4, 2009, we received conditional approval from the FDA to commence the ENTRUST Trial, provided that we resolve the issues identified in the conditional approval letter to the FDA's satisfaction. We intend to work with the FDA to resolve these issues, although there can be no assurance that the FDA will unconditionally approve the IDE application.

In May 2007, we commenced a pivotal trial of the UniFit Abdominal Stent Graft, which we refer to as the UNITE Trial, and as of March 25, 2010, we had enrolled 54 patients in the trial. We plan to enroll 90 patients at 22 institutions. If the institutions participating in any of our clinical studies or trials do not enroll a sufficient number of patients to provide the clinical data necessary to obtain regulatory approval of the device being evaluated, or do not enroll patients in a timely fashion, the approval or clearance of that device for sale may be prevented or delayed.

In January 2008, the FDA audited the conduct of the feasibility study and pivotal clinical trial of our UniFit Abdominal Stent Graft. As a result of this audit, the FDA issued a formal notification, or Form FDA-483, listing nine observations. Specifically, the FDA observed that we had not adequately supervised participating sites, made all required reports to those sites and the FDA, or adequately maintained all records required by FDA regulations. In June 2008, the FDA issued a public Warning Letter regarding many of the matters cited in the Form FDA-483. After receiving this Warning Letter, we submitted a response letter to the FDA detailing our implementation of corrective actions, and in July 2008, we received a letter from the FDA indicating that the corrective actions that we have developed and implemented appear to be adequate. In February 2010, the FDA conducted a follow-up audit of the feasibility study and pivotal clinical trial. At this time we are not aware of any adverse findings, but our corrective actions remain subject to further verification as part of any future inspection, and we cannot assure you that we have been or will continue to be successful in implementing these changes or that the FDA will continue to agree that our implementation is adequate. If the FDA determines that we are not in substantial compliance with IDE requirements, they may take enforcement action against us, and the conduct of our clinical trial could be interrupted or discontinued.

[Table of Contents](#)

The U.S. government is currently evaluating potential modifications to the FDA's 510(k) clearance procedure. We cannot predict the outcome of this evaluation process, but it is possible that modifications, if adopted, could reduce the availability of the 510(k) clearance procedure, or make it more costly, lengthy or uncertain than the current procedure.

Our ability to market our products outside the United States is also subject to regulatory approval, including our ability to demonstrate the safety and effectiveness of our products in the clinical setting. The products for which we are currently conducting studies are already approved for sale outside of the United States. While our studies are ongoing, unfavorable data may arise in connection with usage of our products outside the United States, which could adversely impact approval of our products in the United States. Conversely, unfavorable data from clinical studies in the United States may adversely impact sales of our products outside the United States.

Even if regulatory approval or clearance of a product is granted, the approval or clearance could limit the uses or the claims for which the product may be labeled and promoted, which may limit the market for our products. If we do not obtain and maintain foreign regulatory or FDA approval with respect to our products, as applicable, we will not be able to sell our products, and our future growth will be significantly hampered.

Modifications to our marketed devices may require new regulatory clearances or premarket approvals, or may require us to cease marketing or recall the modified devices until clearances or approvals are obtained.

Any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or would constitute a major change in its intended use, requires the submission of another 510(k) or PMA application to address the change. The FDA requires every manufacturer to make its own determination as to whether a modification requires a new 510(k) clearance or PMA. Although in the first instance we may determine that a change does not rise to a level of significance that would require us to make a submission, the FDA may review and disagree with our determination and can require us to submit a 510(k) or a PMA for a significant technological change or major change or modification in intended use. If the FDA requires us to submit a 510(k) or a PMA for any modification to a previously cleared device, we may be required to cease marketing the device, recall it, and not resume marketing until we obtain clearance or approval from the FDA for the modified version of the device. Delays in our receipt of regulatory clearance or approval will cause delays in our ability to sell our products, which could have a negative effect on our business, results of operations, and prospects. Also, we may be subject to regulatory fines, penalties, and/or other sanctions authorized by the Federal Food, Drug, and Cosmetic Act.

If we or some of our suppliers fail to comply with the FDA's Quality System Regulation and other applicable postmarket requirements, our manufacturing operations could be disrupted, our product sales and profitability could suffer, and we may become subject to a wide variety of FDA enforcement actions.

After a device is placed on the market, numerous regulatory requirements apply. We are subject to inspection and marketing surveillance by the FDA to determine our compliance with all regulatory requirements. If the FDA finds that we have failed to comply with any regulatory requirements, it can institute a wide variety of enforcement actions.

We and some of our suppliers must comply with the FDA's Quality System Regulation, which governs the methods used in, and the facilities and controls used for, the design, testing, manufacture, control, quality assurance, installation, servicing, labeling, packaging, storage, and shipping of medical devices. The FDA enforces the Quality System Regulation through unannounced inspections. We have been, and anticipate in the future being, subject to such inspections. If we or one of our suppliers fails a Quality System Regulation inspection, or if a corrective action plan adopted by us or one of our suppliers is not sufficient, the FDA may bring an enforcement action against us, and our operations could be disrupted and our manufacturing delayed.

[Table of Contents](#)

We are also subject to the FDA's general prohibition against promoting our products for unapproved or off-label uses and to the medical device reporting, or MDR, regulations that require us to report to the FDA if our products may have caused or contributed to a death or serious injury, or if our device malfunctions and a recurrence of the malfunction would likely result in a death or serious injury. We must also file reports with the FDA of some device corrections and removals, and we must adhere to the FDA's rules on labeling and promotion. If we fail to comply with these or other FDA requirements or fail to take adequate corrective action in response to any significant compliance issue raised by the FDA, the FDA can take significant enforcement actions, which could harm our business, results of operations, and our reputation.

In addition, most other countries, such as Japan, require us to comply with manufacturing and quality assurance standards for medical devices that are similar to those in force in the United States before marketing and selling our products in those countries. If we fail to comply, we would lose our ability to market and sell our products in those foreign countries.

Even after receiving regulatory clearance or approval, our products may be subject to product recalls, which may harm our reputation and divert managerial and financial resources.

The FDA and similar governmental authorities in other countries have the authority to order mandatory recall of our products or order their removal from the market if the governmental entity finds that our products would cause serious adverse health consequences or death. A government mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors or design defects, including labeling defects. For example, we initiated a voluntary recall of our LeverEdge Contrast Injector in April 2007 due to a packaging flaw that compromised the sterility of the product. Any future recall of our products may harm our reputation with customers and divert managerial and financial resources.

If we do not comply with foreign regulatory requirements to market our products outside the United States, our business will be harmed.

Sales of medical devices outside the United States are subject to international regulatory requirements that vary from country to country. These requirements and the amount of time required for approval may differ from our experiences with the FDA in the United States. In some cases, we rely on our non-U.S. distributors to obtain premarket approvals, complete product registrations, comply with clinical trial requirements, and complete those steps that are customarily taken in the applicable jurisdictions to comply with governmental and quasi-governmental regulation. In the future, we expect to continue to rely on distributors in this manner in those countries where we continue to market and sell our products through them. Failure to satisfy these foreign regulations would impact our ability to sell our products in these countries and could cause our business to suffer. There can be no assurance that we will be able to obtain or maintain the required regulatory approvals in these countries.

Our products are regulated in the European Union under the European Medical Devices Directive (93/42/EEC). In order to market our medical devices in the European Union, we are required to obtain CE mark certification, which denotes conformity to the essential requirements of the Medical Devices Directive.

We have received CE mark certification to sell nearly all of our products. However, there can be no assurance that we will be able to obtain a CE mark for new products in the future or for modifications to our existing products or in the manufacturing of our products, and obtaining a CE mark may involve a significant amount of time and expense, stringent clinical and preclinical testing, or modification of our products and could result in limitations being placed on the use of our products in order to obtain approval.

Maintaining a CE mark is contingent upon our continued compliance with applicable European medical device requirements, including limitations on advertising and promotion of medical devices and requirements governing the handling of adverse events. There can be no assurance that we will be successful in maintaining

[Table of Contents](#)

the CE mark for any of our current products. In particular, adverse event reporting requirements in the European Union mandate that we report incidents which led or could have led to death or serious deterioration in health. Under certain circumstances, we could be required to initiate a recall or removal of our product from the market in order to address product deficiencies or malfunctions. Any recall of our products may harm our reputation with customers and divert managerial and financial resources.

Failure to receive or maintain approval would prohibit us from selling these products in member countries of the European Union, and would require significant delays in obtaining individual country approvals. If we do not receive or maintain these approvals, our business could be harmed.

Our manufacturing facilities are subject to periodic inspection by European regulatory authorities and Notified Bodies, and we must demonstrate compliance with the Medical Devices Directive. Any failure by us to comply with European requirements in this regard may entail our taking corrective action, such as modification of our policies and procedures. In addition, we may be required to cease all or part of our operations for some period of time until we can demonstrate that appropriate steps have been taken. There can be no assurance that we will be found in compliance with such standards in future audits.

In Japan, the Ministry of Health, Labor and Welfare (the MHLW) regulates medical devices through the Pharmaceutical Affairs Law, which was reformed effective April 1, 2005. The revisions to Japanese regulations have resulted in longer lead times for product development.

Any such delay in product registrations could have a negative impact on our results of operations.

If we fail to comply with healthcare regulations, we could face substantial penalties and our business, operations, and financial condition could be adversely affected.

While we do not control referrals of healthcare services, and we do not receive payments directly from Medicare, Medicaid, or other third-party payors, healthcare laws and regulations apply broadly and may apply to our business. We could be subject to healthcare fraud and patient privacy regulation by the federal government and the states and international jurisdictions in which we conduct our business. The regulations that may affect our ability to operate include:

- the federal healthcare program's Anti-Kickback Statute, which constrains, among other things, our marketing practices, educational programs, pricing and discounting policies, and relationships with healthcare providers by prohibiting persons from soliciting, receiving, or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing, recommending, furnishing, or arranging for an item or service, for which payment may be made under a federal healthcare program such as the Medicare or Medicaid programs;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us, because we provide coding and billing advice to customers;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to health care matters and which also imposes regulatory and contractual requirements relating to the privacy, security, and transmission of individually identifiable health information;
- state laws analogous to each of the above federal laws, such as anti-kickback and false claims laws that may apply to items or services reimbursed by non-governmental third-party payors, including commercial insurers, state laws that regulate, and in many cases restrict, medical device sales and marketing practices, and state laws governing the privacy of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts;

[Table of Contents](#)

- federal physician self-referral prohibitions, such as The Ethics in Patient Referral Act of 1989, commonly referred to as the federal physician self-referral law or the Stark law, which under certain circumstances prohibit physicians from referring patients for services paid for by Medicare or Medicaid to any entity in which the physician or an immediate family member has an ownership, compensation, or other financial interest, unless a specific statutory or regulatory exception applies; and
- international regulations similar in nature and scope to the above-referenced requirements, including the European Union directive on data privacy, which imposes restrictions on the collection, use, disclosure, and processing of personal data.

While we believe that our present and past operations are and have been compliant in all material respects with the laws and regulations described above, there can be no assurance that we will not be found to be, or found to have been, in violation of any of such laws or regulations and as a result we may be subject to penalties, including civil and criminal penalties, damages, fines, and the curtailment or restructuring of our operations. Any penalties, damages, fines, or curtailment or restructuring of our operations could impair our ability to operate our business and our financial results. The risk of our being found in violation of these laws or regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws or regulations, even if we successfully defend against them, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business.

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

Our manufacturing operations and our research and development programs involve the use of hazardous substances and are subject to a variety of federal, state, and local environmental laws and regulations relating to the storage, use, discharge, disposal, and remediation of, and human exposure to, hazardous substances. Our research and development and manufacturing operations produce biological waste materials, such as human and animal tissue, and waste solvents, such as isopropyl alcohol. Regulatory authorities permit these operations, and the resulting waste materials are disposed of in material compliance with environmental laws and regulations. Compliance with these laws and regulations is expensive, and non-compliance could result in substantial liabilities, which could exceed our insurance coverage. 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.

We cannot assure you that violations of these laws and regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure, or other causes. The expense associated with environmental regulation and remediation could harm our financial condition and operating results.

Inadequate levels of reimbursement from governmental or other third-party payors for procedures using our products may cause our net sales to decline.

Sales of our products depend in part on the reimbursement by governmental and private healthcare payors to our hospital and physician customers or their patients for the purchase and use of our products. In the United States, healthcare providers that purchase our products generally rely on third-party payors, principally federal Medicare, state Medicaid, and private health insurance plans, to pay for all or a portion of the cost of procedures. Any delays in obtaining, or an inability to obtain, payor coverage and reimbursement for our products or the services in which our products are used may cause our net sales to decline. In addition, if the reimbursement policies of domestic or foreign governmental or private healthcare payors change, our customers would likely change their purchasing patterns or the frequency of their purchases of the affected products.

[Table of Contents](#)

Changes in healthcare systems in the United States or elsewhere could adversely affect the demand for our products, as well as the way we conduct business. Third-party payors have adopted, and are continuing to adopt, a number of healthcare policies intended to curb rising healthcare costs. These policies include:

- controls on government-funded reimbursement for healthcare services and price controls on medical products and services providers;
- limitations on coverage and reimbursement for new medical technologies and procedures; and
- the introduction of managed care or prospective payment systems in which healthcare providers contract to provide comprehensive healthcare for a fixed reimbursement amount per person or per procedure.

We are unable to predict whether federal, state, or local healthcare reform legislation or regulations, or private payor policies, affecting our business may be proposed or enacted in the future, or what effect any such legislation, regulations, or policies would have on our business. Any such legislation, regulations, or policies that affect the coverage and reimbursement of our current or future products, or the procedures utilizing our current or future products, could cause our net sales to decline.

Outside of the United States, reimbursement systems vary significantly by country. Many foreign markets have government-managed healthcare systems that govern reimbursement for new devices and procedures. In most markets, there are private insurance systems as well as government-managed systems. Additionally, some foreign reimbursement systems provide for limited payments within a given period. These systems are subject to the same pressures to curb rising healthcare costs and control healthcare expenditures as those in the United States. For example, the government of Japan recently announced reductions in medical device reimbursement effective as of April 1, 2010. If adequate levels of reimbursement from third-party payors outside of the United States are not obtained, sales of our products outside of the United States may decrease and we may fail to achieve or maintain significant non-U.S. sales. For example, our TAArget and UniFit stent graft do not have approved reimbursement codes in France, and, as a result, many hospital customers are unable or unwilling to purchase such products. Although we are seeking to obtain the appropriate reimbursement codes, there can be no assurance that we will be successful in doing so in timely fashion or at all, and, if we are not successful our ability to grow our stent graft sales in this market would be impaired.

Risks Related to Intellectual Property

If we fail to adequately protect our intellectual property rights, or prevent use of our intellectual property by third parties, we could lose a significant competitive advantage and our business may suffer.

Our success depends in part on obtaining, maintaining, and enforcing our patents, trademarks, and other proprietary rights, and our ability to avoid infringing on the proprietary rights of others. We take precautionary steps to protect our technological advantages and intellectual property. We rely upon patent, trade secret, copyright, know-how, and trademark laws, as well as license agreements and contractual provisions, to establish our intellectual property rights and protect our products. These measures may only afford limited protection and may not:

- prevent our competitors from duplicating our products;
- prevent our competitors from gaining access to our proprietary information and technology; or
- permit us to gain or maintain a competitive advantage.

The issuance of a patent is not conclusive as to its validity or enforceability. Any patents we have obtained or will obtain in the future might also be invalidated or circumvented by third parties. In addition, our pending patent applications may not issue as patents or, if issued, may not provide commercially meaningful protection, as competitors may be able to design around our patents to produce alternative, non-infringing designs. Should

[Table of Contents](#)

such challenges to our patents be successful, competitors might be able to market products and use manufacturing processes that are substantially similar to ours. Additionally, we may not be able to effectively protect our rights in unpatented technology, trade secrets, and confidential information. We have a policy of requiring key employees and consultants and corporate partners with access to trade secrets or other confidential information to execute confidentiality agreements. Our confidentiality agreements also require our employees to assign to us all rights to any inventions made or conceived during their employment with us. We also generally require our consultants to assign to us any inventions made during the course of their engagement by us. There can be no assurance, however, that these agreements will provide meaningful protection or adequate remedies for us in the event of unauthorized use, transfer, or disclosure of confidential information or inventions.

In addition, the laws of foreign countries may not protect our intellectual property rights effectively or to the same extent as the laws of the United States. If our intellectual property rights are not adequately protected, we may not be able to commercialize our technologies, products, or services and our competitors could commercialize similar technologies, which could result in a decrease in our sales and market share.

If third parties claim that we infringe upon their intellectual property rights, we may incur liabilities and costs, and we may have to redesign or discontinue selling the affected product.

The medical device industry is litigious with respect to patents and other intellectual property rights. Companies operating in our industry routinely seek patent protection for their product designs, and many of our principal competitors have large patent portfolios. Companies in the medical device industry have used intellectual property litigation to gain a competitive advantage. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. We face the risk of claims that we have infringed on third parties' intellectual property rights, and we cannot assure you that our products or methods do not infringe the patents or other intellectual property rights of third parties. Prior to launching major new products in our key markets, we typically evaluate existing intellectual property rights. However, our competitors may also have filed for patent protection that is not as yet a matter of public knowledge or claim trademark rights that have not been revealed through our availability searches. Our efforts to identify and avoid infringing on third parties' intellectual property rights may not always be successful. Any claims of patent or other intellectual property infringement, even those without merit, could:

- be expensive and time consuming to defend;
- result in us being required to pay significant damages to third parties for past use of the asserted intellectual property;
- harm our reputation;
- cause us to cease making or selling products that incorporate the challenged intellectual property;
- require us to redesign, reengineer, or rebrand our products, which may not be possible and could be costly and time consuming if it is possible to do so at all;
- require us to enter into royalty or licensing agreements in order to obtain the right to use a third party's intellectual property, which agreements may not be available on terms acceptable to us or at all;
- divert the attention of our management and key personnel from other tasks important to the success of our business; or
- result in our customers or potential customers deferring or limiting their purchase or use of the affected products until resolution of the litigation.

It is also possible that one of our competitors could claim that our manufacturing process violates an existing patent. If we were unsuccessful in defending such a claim, we may be forced to stop production at one or more of our manufacturing facilities.

[Table of Contents](#)

In addition, new patents obtained by our competitors could threaten a product's continued life in the market even after it has already been introduced. If our business is successful, the possibility may increase that others will assert infringement claims against us.

In addition, we may become subject to interference proceedings conducted in the United States Patent Office or opposition proceedings conducted in foreign patent offices challenging the priority of invention or the validity of our patents. For example, in 2005 and 2006, respectively, Boston Scientific Corporation initiated opposition proceedings in the European Patent Office claiming that we were not the first to file a patent application on certain material. As a result of these opposition proceedings, some of our patent claims were canceled. Although the cancellation of these patent claims did not affect our ability to manufacture, distribute, or sell any of our products, it could affect our right to exclude others from selling products similar to our TAArget and UniFit stent grafts in Europe.

We may become involved in lawsuits and administrative proceedings to protect, defend, or enforce our patents that would be expensive and time consuming.

In order to protect or enforce our patent rights, we may initiate patent litigation or interference or opposition proceedings against third parties in the United States or in foreign countries. The defense of intellectual property rights, including patent rights through lawsuits, interference, or opposition proceedings, and other legal and administrative proceedings can be costly and can divert our technical and management personnel from their normal responsibilities. Such costs increase our operating losses and reduce our resources available for development activities. An adverse determination of any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. For example, during the course of this kind of litigation and despite protective orders entered by the court, confidential information may be inadvertently disclosed in the form of documents or testimony in connection with discovery requests, depositions, or study testimony. This disclosure could materially adversely affect our business and financial results.

If we fail to observe the terms of our agreements with third-party patent holders, we may lose the ability to manufacture, market, or sell some of our products.

Certain aspects of our products are the subject of patents held by third parties. We manufacture, market, and sell these products pursuant to license agreements with these third parties. These arrangements require us to pay royalties, typically determined as a percentage of our net sales for the underlying product. If we fail to make these payments or otherwise fail to observe the terms of these agreements, we may lose our ability to sell these products. For example, we manufacture, market, and sell our TAArget and UniFit stent grafts pursuant to a sublicense from Bard Peripheral Vascular, Inc., a subsidiary of C.R. Bard, Inc., to a U.S. patent covering aspects of ePTFE. Our arrangement with Bard may preclude us from assigning the sublicense to a third party, including in connection with the sale of more than 30% of our capital stock or all or substantially all of our assets, without the prior consent of Bard. The loss by us of our right to manufacture, market, and sell our TAArget and UniFit products would harm our business and results of operations.

Risks Related to Our Common Stock

Our stock price may be volatile, and your investment in our common stock could suffer a decline in value.

There has been significant volatility in the market price and trading volume of equity securities that is unrelated to the financial performance of the companies issuing the securities. These broad market fluctuations may negatively affect the market price of our common stock. You may not be able to resell your shares at or above the price at which you purchased them due to fluctuations in the market price of our common stock caused by changes in our operating performance or prospects, a low volume of trading in our common stock, and other factors.

Some specific factors that may have a significant effect on our common stock market price include:

- actual or anticipated fluctuations in our operating results or future prospects;
- our announcements or our competitors' announcements of new products;
- public concern as to the safety or efficacy of our products;
- the public's reaction to our press releases, our other public announcements, and our filings with the Securities and Exchange Commission;
- strategic actions by us or our competitors, such as acquisitions or restructurings;
- changes in our growth rates or our competitors' growth rates;
- developments regarding our patents or proprietary rights or those of our competitors;
- our inability to raise additional capital;
- changes in financial markets or general economic conditions, including those resulting from war, incidents of terrorism, and responses to such events;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- changes in accounting standards, policies, guidance, interpretations, or principles;
- sales of common stock by us or our directors, officers, or principal stockholders; and
- changes in stock market analyst recommendations or earnings estimates regarding our common stock, other comparable companies, or our industry generally.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs and divert our management's attention and resources that would otherwise be used to benefit the future performance of our business.

Our directors, officers, and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

Our directors, officers, and affiliated stockholders holding more than 5% of our common stock collectively control a majority of our outstanding common stock, assuming the exercise of all options held by such persons. As a result, these stockholders, if they act together, would be able to control the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change in control, might adversely affect the market price of our common stock, and may not be in the best interests of our other stockholders.

[Table of Contents](#)

Future acquisitions that we make may be dilutive to our current stockholders.

We intend to pursue the acquisition of complementary products, technologies, or businesses, and in connection with these acquisitions we may use substantial portions of our available cash or make dilutive issuances of securities. In addition, an acquisition could impair our operating results by causing us to incur debt or requiring us to recognize acquisition expenses or amortize, depreciate, or impair acquired assets. This debt would be senior to our outstanding shares of capital stock upon our liquidation.

Our corporate documents and Delaware law contain provisions that could discourage, delay, or prevent a change in control of our company.

Provisions in our amended and restated certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the division of our board of directors into three classes;
- the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or due to the resignation or departure of an existing board member;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for the advance notice of nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of our board of directors to alter our bylaws without obtaining stockholder approval;
- the ability of the board of directors to issue, without stockholder approval, up to 5,000,000 shares of preferred stock with terms set by the board of directors, which rights could be senior to those of our common stock;
- the elimination of the rights of stockholders to call a special meeting of stockholders and to take action by written consent in lieu of a meeting;
- the required approval of at least 75% of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our amended and restated certificate of incorporation regarding the election and removal of directors and the inability of stockholders to take action by written consent in lieu of a meeting; and
- the required approval of at least 75% of the shares entitled to vote at an election of directors to remove directors with cause.

We are also subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law. Under these provisions, if anyone becomes an "interested stockholder," we may not enter into a "business combination" with that person for three years without special approval, which could discourage a third party from making a takeover offer and could delay or prevent a change of control. For purposes of Section 203, "interested stockholder" means, generally, someone owning 15% or more of our outstanding voting stock or an affiliate of ours that owned 15% or more of our outstanding voting stock during the past three years, subject to certain exceptions as described in Section 203.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our principal worldwide executive, distribution, and manufacturing operations are located at a 27,098 square foot leased facility and a nearby 7,477 square foot leased facility, located in Burlington, Massachusetts. In addition, our international operations are headquartered at a 12,841 square foot leased facility located in Sulzbach, Germany, our AlboGraft manufacturing operations are located at a 16,146 square foot leased facility in Brindisi, Italy, and our Asian operations are located at a 2,140 square foot leased facility located in Tokyo, Japan.

On March 23, 2010, we entered into a new series of lease agreements that:

- extend the lease of our 27,098 square foot Burlington facility until approximately 2017;
- lease an adjacent 16,629 square foot facility in Burlington until approximately 2017, which after approximately 2.5 years will be expanded to 27,289 square feet; and
- terminate the lease of our 7,477 square foot Burlington facility.

The leases for our Sulzbach, Brindisi, and Tokyo facilities expire in 2010, 2016, and 2010, respectively. Based on our current operating plan, we believe our current facilities are adequate.

Item 3. Legal Proceedings

In the ordinary course of business, we are from time to time involved in lawsuits, claims, investigations, proceedings, and threats of litigation consisting of intellectual property, commercial and other matters. While the outcome of these proceedings and claims cannot be predicted with certainty, there are no matters, as of December 31, 2009, that, in the opinion of management, might have a material adverse effect on our financial position, results of operations or cash flows.

Item 4. Removed and Reserved

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock began trading on The NASDAQ Global Market under the symbol “LMAT” on October 19, 2006. The following table sets forth the high and low sales closing prices of our common stock as reported on The NASDAQ National Market for the eight quarters ending December 31, 2009:

	<u>High</u>	<u>Low</u>
<u>Year ended December 31, 2008:</u>		
First quarter ended March 31, 2008	\$6.71	\$ 3.20
Second quarter ended June 30, 2008	\$4.69	\$2.66
Third quarter ended September 30, 2008	\$ 3.71	\$ 2.74
Fourth quarter ended December 31, 2008	\$ 3.21	\$ 1.86
<u>Year ended December 31, 2009:</u>		
First quarter ended March 31, 2009	\$ 2.81	\$ 1.91
Second quarter ended June 30, 2009	\$ 3.83	\$ 2.23
Third quarter ended September 30, 2009	\$ 4.09	\$ 2.82
Fourth quarter ended December 31, 2009	\$ 5.00	\$ 4.00

Holders of Record

On March 25, 2010, the closing price per share of our common stock was \$4.66 as reported on The NASDAQ Global Market, and we had approximately 426 stockholders of record. In addition, we believe that a significant number of beneficial owners of our common stock hold their shares in street name.

Dividend Policy

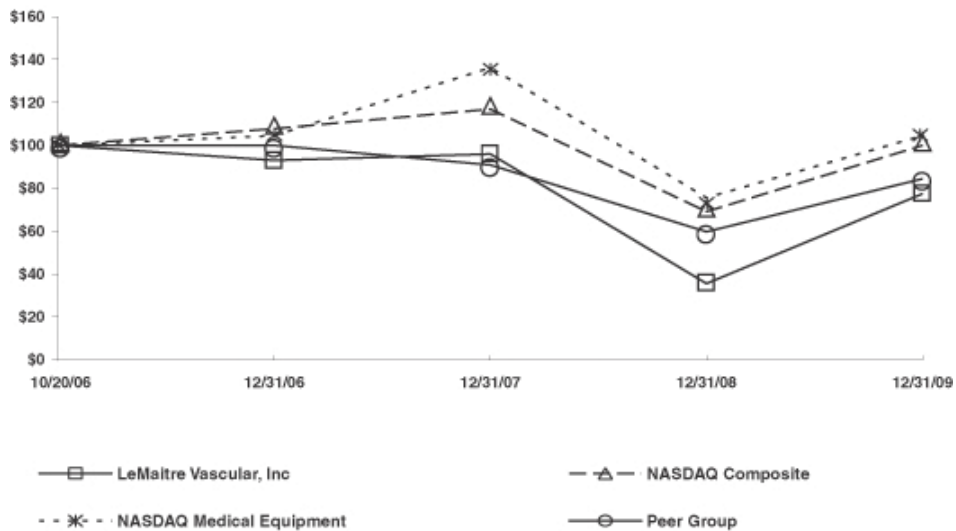
We have never paid a cash dividend and have no present intention to pay cash dividends in the foreseeable future. We intend to retain any future earnings for use in our business.

Stock Price Performance Graph

Set forth below is a graph comparing the cumulative total stockholder return on LeMaitre’s common stock with the NASDAQ US Composite Index, the NASDAQ Medical Equipment Index and a peer group for the period covering LeMaitre’s initial public offering on October 19, 2006, through the end of LeMaitre’s fiscal year ended December 31, 2009. The graph assumes an investment of \$100.00 made at the opening of trading on October 20, 2006, in (i) LeMaitre’s common stock, (ii) the stocks comprising the NASDAQ US Composite Index, (iii) stocks comprising the NASDAQ Medical Equipment Index, and (iv) the stocks comprising our peer group. This graph is not “soliciting material,” is not deemed “filed” with the SEC and is not to be incorporated by reference into any filing of LeMaitre under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

COMPARISON OF 38 MONTH CUMULATIVE TOTAL RETURN*

Among LeMaitre Vascular, Inc, The NASDAQ Composite Index,
The NASDAQ Medical Equipment Index And A Peer Group



* \$100 invested on 10/20/06 in stock or 9/30/06 in index, including reinvestment of dividends.
Fiscal year ending December 31.

	10/20/06	12/31/06	12/31/07	12/31/08	12/31/09
LeMaitre Vascular, Inc	100.00	93.02	96.12	35.78	77.52
NASDAQ Composite	100.00	107.93	117.11	69.21	99.98
NASDAQ Medical Equipment	100.00	104.55	136.23	75.67	104.63
Peer Group	100.00	99.97	91.00	59.86	84.64

LeMaitre’s fiscal year ends on the last day of December each year; data in the above table reflects market values for our stock and NASDAQ and peer group indices as of the close of trading on the last trading day of year presented.

The peer group includes the following companies: AngioDynamics, Inc., Cardiovascular Systems Inc., Endologix, Inc., ev3 Inc., Integra Lifesciences Holdings Corporation, Kensey Nash Corporation, Merit Medical Systems Inc., Micrus Endovascular Corp., and Vascular Solutions, Inc.

Recent Sales of Unregistered Securities

In October 2006, we completed our initial public offering of our common stock through a Registration Statement on Form S-1 (File No. 333-133532) that was declared effective by the SEC on October 18, 2006. We registered 6,325,000 shares of our common stock with a proposed aggregate offering price of \$44.3 million. All of the shares of common stock issued pursuant to the registration statement were sold at a price to the public of \$7.00 per share. The managing underwriters were Goldman Sachs & Co. Incorporated, CIBC World Markets Corp., Cowen and Company, LLC and Thomas Weisel Partners LLC.

[Table of Contents](#)

In connection with our initial public offering, we sold 5,500,000 shares and raised aggregate net proceeds of approximately \$35.8 million, after deducting underwriting discounts and commission of approximately \$2.7 million and offering expenses of \$3.0 million. As of December 31, 2009, we have spent the net proceeds as follows:

- \$6.7 million for acquisitions;
- \$3.9 million to pay down all outstanding indebtedness under two term loans and a revolving line of credit;
- \$3.5 million for the termination of our AlboGraft Vascular Graft distribution agreement with Edwards Lifesciences;
- \$2.3 million for equipment;
- \$1.9 million for the early termination of our distributor in Italy;
- \$1.3 million for the payment of expenses related to our initial public offering
- \$0.9 million for the acquisition of licenses and technology;
- \$0.4 million for severance payments associated with our 2008 restructuring activities;
- \$0.3 million to pay down the revolving line of credit of our Biomateriali subsidiary (which was outstanding on the acquisition date); and
- \$14.6 million for working capital purposes.

No payments for such offering expenses were made directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates.

As of December 31, 2009, we have spent the net proceeds of \$35.8 million in its entirety.

Issuer Purchases of Equity Securities

In the quarter ending December 31, 2009, we repurchased 16,452 shares of our common stock in conjunction with the forfeiture of shares to satisfy the employees' obligations with respect to withholding taxes in connection with the vesting of shares of restricted stock.

<u>Period</u>	<u>Issuer Purchases of Equity Securities</u>			
	<u>Total Number of Shares (or Units) Purchased (1)</u>	<u>Average Price Paid Per Share (or Unit)</u>	<u>Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Program (2)</u>	<u>Maximum Number (or Approximate Dollar Value) of Shares (or Units) that may yet be Purchased under the Plans or Program</u>
October 1, 2009 through October 31, 2009	—	\$ —	291	\$ 1,904,817
November 1, 2009 through November 30, 2009	5,527	\$ 4.42	49,661	\$ 1,676,094
December 1, 2009 through December 31, 2009	10,925	\$ 4.90	41,335	\$ 1,478,641
Total	<u>16,452</u>	<u>\$ 4.74</u>	<u>91,287</u>	<u>\$ 1,478,641</u>

- (1) For the three months ended December 31, 2009, we repurchased 16,452 shares of our common stock to satisfy the employees' obligations with respect to withholding taxes in connection with the vesting of restricted stock units.
- (2) On July 27, 2009, our board of directors approved our repurchase of shares of common stock having a value of up to \$1,000,000 in the aggregate pursuant a repurchase program. We publicly announced this program on July 29, 2009. On October 26, 2009, our board of directors increased the aggregate total of the repurchase program to \$2,000,000. The expiration date of this program is December 31, 2010.

[Table of Contents](#)

Item 6. Selected Financial Data

You should read the following selected consolidated financial data in conjunction with our consolidated financial statements and the related notes which are included elsewhere in this Annual Report and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of this Annual Report. We have derived the consolidated statement of operations data for the years ended December 31, 2007, 2008, and 2009, and the consolidated balance sheet data as of December 31, 2008 and 2009, from our audited consolidated financial statements, which are included elsewhere in this Annual Report. We have derived the consolidated statement of operations data for the years ended December 31, 2005 and 2006, and the consolidated balance sheet data as of December 31, 2005, 2006, and 2007 from our audited consolidated financial statements, which are not included in this Annual Report. Our historical results for any prior period are not necessarily indicative of results to be expected for any future period.

	Year ended December 31,				
	2005	2006	2007	2008	2009
(in thousands, except per share data)					
Consolidated Statements of Operations Data:					
Net sales	\$ 30,727	\$ 34,628	\$ 41,446	\$ 48,720	\$ 50,908
Cost of sales	8,927	9,367	10,739	14,817	13,604
Gross profit	21,800	25,261	30,707	33,903	37,304
Operating expenses:					
Sales and marketing	10,960	15,183	19,443	19,762	17,710
General and administrative	6,405	7,105	9,534	9,999	9,852
Research and development	3,015	3,301	4,591	5,328	5,910
Purchased research and development	—	—	373	—	—
Restructuring charges	998	257	1,042	1,147	1,777
Impairment charge	—	94	7	597	106
Total operating expenses	21,378	25,940	34,990	36,833	35,355
Income (loss) from operations	422	(679)	(4,283)	(2,930)	1,949
Other income (expense):					
Interest income	4	299	1,299	530	38
Interest expense	(182)	(296)	(1)	(61)	(26)
Investment Impairment	—	—	—	(168)	—
Foreign currency gain (loss)	(217)	228	292	(139)	280
Other income (expense), net	551	(72)	(9)	(53)	(26)
Total other income	156	159	1,581	109	266
Income (loss) before income tax	578	(520)	(2,702)	(2,821)	2,215
Provision for income taxes	523	652	232	493	617
Net income (loss)	\$ 55	\$ (1,172)	\$ (2,934)	\$ (3,314)	\$ 1,598
Net income (loss) per share available for common shareholders:					
Basic	\$ 0.01	\$ (0.15)	\$ (0.19)	\$ (0.21)	\$ 0.10
Diluted	\$ 0.01	\$ (0.15)	\$ (0.19)	\$ (0.21)	\$ 0.10
Weighted-average shares outstanding:					
Basic	8,246	9,904	15,398	15,572	15,687
Diluted	8,701	9,904	15,398	15,572	15,916

[Table of Contents](#)

	December 31,				
	2005	2006	2007	2008	2009
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	\$ 817	\$ 17,636	\$ 6,397	\$ 15,895	\$ 23,192
Marketable securities	—	13,182	16,198	5,359	808
Current assets	10,817	43,641	41,766	37,116	39,550
Total assets	25,068	56,963	60,857	54,399	56,906
Revolving line of credit and current portion of long-term debt	1,142	—	262	—	—
Current liabilities (excluding revolving line of credit and current portion of long-term debt)	3,953	5,378	9,783	6,933	6,548
Long-term liabilities	1,437	886	2,226	1,718	2,145
Total liabilities	6,532	6,264	12,271	8,651	8,693
Total stockholders' equity	18,536	50,699	48,586	45,748	48,213

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our consolidated financial statements and the related notes contained elsewhere in this Annual Report on Form 10-K and in our other Securities and Exchange Commission filings. The following discussion may contain predictions, estimates, and other forward-looking statements that involve a number of risks and uncertainties, including those discussed under "Risk Factors" and elsewhere in this Annual Report on Form 10-K. These risks could cause our actual results to differ materially from any future performance suggested below.

Overview

We are a medical device company that develops, manufactures, and markets medical devices and implants for the treatment of peripheral vascular disease. Our principal product offerings are sold throughout the world, primarily in the United States, the European Union and, to a lesser extent, Japan. We estimate that the annual worldwide market addressed by our 15 product lines approaches \$1 billion and that the annual worldwide market for all peripheral vascular devices approximates \$3 billion. We have used acquisitions as a primary means of further accessing the larger peripheral vascular device market, and we expect to continue to pursue this strategy in the future. We currently manufacture most of our product lines in our Burlington, Massachusetts, headquarters.

Our products are used by vascular surgeons who treat peripheral vascular disease through both open surgical methods and more recently adopted endovascular techniques. In contrast to interventional cardiologists and interventional radiologists, neither of whom are certified to perform open surgical procedures, vascular surgeons can perform both open surgical and minimally invasive endovascular procedures, and are therefore uniquely positioned to provide patients with a wider range of treatment options.

Below is a listing of our product lines and product categories:

- Our **Endovascular** product category includes our TAArget Thoracic Stent Graft, UniFit Abdominal Stent Graft, VascuTape Radiopaque Tape, LeverEdge Contrast Injector, and The UnBalloon Non-Occlusive Modeling Catheter. We also report the results of our distribution of the Endologix Powerlink System within this category.
- Our **Vascular** product category includes our Expandable LeMaitre Valvulotome, Pruitt-Inahara and Pruitt F3 Carotid Shunts, InvisiGrip Vein Stripper, LeMaitre Balloon Catheters, and the five remote endarterectomy products, AnastoClip Vessel Closure System, and the AlboGraft Vascular Graft. We also report the results of our distribution of the XenoSure Biologic Vascular Patch within this category.

[Table of Contents](#)

- Our **General Surgery** product category includes our Reddick Cholangiogram Catheter and related accessories and OptiLock Implantable Port.

For the 2007, 2008 and 2009 fiscal years, we reported the net sales of our AnastoClip Vessel Closure System within the Endovascular product category, and our discussion herein maintains this presentation. Commencing in 2010 we will report these net sales in the Vascular category.

We evaluate the sales performance of our various product lines utilizing criteria that vary based upon the position of each product line in its expected life cycle. For established products, we typically review unit sales and selling prices. For faster growing products, we typically also focus upon new account generation and customer retention.

Our business opportunities include the following:

- the addition of complementary products through acquisition;
- the updating of existing products and introduction of new products through research and development;
- the long-term growth of our sales force in North America, Europe and Japan; and
- the introduction of our products in new markets upon obtainment of regulatory approvals in these markets.

We are currently pursuing each of these opportunities.

To assist us in evaluating our business strategies, we regularly monitor long-term technology trends in the peripheral vascular device market. Additionally, we consider the information obtained from discussions with the medical community in connection with the demand for our products, including potential new product launches. We also use this information to help determine our competitive position in the peripheral vascular device market and our manufacturing capacity requirements.

We sell our products primarily through a direct sales force. As of December 31, 2009, our sales force was comprised of 61 sales representatives in North America, the European Union and Japan. We also sell our products through a network of distributors in various countries outside of the United States and Canada. Our worldwide headquarters are located in Burlington, Massachusetts. Our international operations are headquartered in Sulzbach, Germany. We also have sales offices located in Tokyo, Japan, and Rome, Italy, and a manufacturing facility in Brindisi, Italy. In 2009, approximately 92% of our net sales were generated in markets in which we employ direct sales representatives.

Because we believe that direct-to-hospital sales engender closer customer relationships, and allow for higher selling prices and gross margins, we periodically enter into transactions with our distributors to transition their sales of our medical devices to our direct sales organization. In March 2009, we entered into a definitive agreement with Edwards Lifesciences to terminate its distribution of our AlboGraft Vascular Graft. We paid \$3.5 million to Edward Lifesciences in exchange for this early termination, the purchase of their AlboGraft customer list, certain customer contracts and remaining AlboGraft inventory, and their provision of sales and marketing services.

Fluctuations in the rate of exchange between the U.S. dollar and foreign currencies, primarily the euro, affect our financial results. For the year ended December 31, 2009, approximately 42% of our sales were denominated in foreign currencies. We expect that foreign currencies will continue to represent a similarly significant percentage of our sales in the future. Selling, marketing, and administrative costs related to these sales are largely denominated in the same respective currency, thereby partially mitigating our transaction risk exposure. We therefore believe that the risk of a significant impact on our operating income from foreign currency fluctuations is moderated. However, most of our foreign sales are denominated in local currency, and if there is an increase in the rate at which a foreign currency is exchanged for U.S. dollars, it will require more of

[Table of Contents](#)

the foreign currency to equal a specified amount of U.S. dollars than before the rate increase. In such cases we will receive less in U.S. dollars than we did before the rate increase went into effect.

Our strategy for growing our business includes the acquisition of complementary product lines and companies and occasionally the discontinuance or divestiture of products or activities that are no longer complementary. These actions may affect the comparability of our financial results from period to period and may cause substantial fluctuations period to period. For example, in December 2008 we entered into an agreement with Neovasc Inc. to distribute the XenoSure Biologic Vascular Patch. We began selling this product in 2009.

The following table indicates the impact of foreign currency fluctuations and changes to our business activities for each of our quarters during the three most recently completed fiscal years:

(amounts in thousands)	2009				2008				2007			
	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1
Total net sales	13,584	13,346	12,630	11,348	12,111	12,023	12,739	11,847	11,104	10,144	10,315	9,883
Impact of currency exchange rate fluctuations(1)	613	(215)	(699)	(622)	(448)	452	836	674	439	253	267	322
Net impact of acquisitions, distributed sales and discontinued products, excluding currency exchange rate fluctuations(2)	397	333	234	101	235	703	929	1,133	1,116	635	567	455

- (1) Represents the impact of the change in foreign exchange rates compared to the corresponding quarter of the prior year based on the weighted average exchange rate for each quarter.
- (2) Represents the impact of sales of products of acquired businesses and distributed sales of other manufacturers' products, net of sales related to discontinued products and other activities, based on 12 months' sales following the date of the event or transaction, for the current period only.

In recent years we have experienced comparatively greater success in product markets characterized by low or limited competition. In these markets, we believe that we have been able to increase selling prices without sacrificing material market share, to the benefit of our rate of net sales growth. In contrast, we have experienced comparatively lesser success in highly competitive product markets such as aortic stent grafts, where we face intense competition from larger companies with greater resources. For example, we believe that intense competition from Medtronic, W. L. Gore and Cook has affected the adoption of our TAArget Thoracic Stent Graft in European markets. While this latter trend may moderate as we continue to grow our organization, and while we believe that this trend can be mitigated by our strong relationships with our vascular surgeon customers, there can be no assurance that we will be successful in the aortic stent graft market or in other highly competitive markets.

Net Sales and Expense Components

The following is a description of the primary components of our net sales and expenses:

Net sales. We derive our net sales from the sale of our products, less discounts and returns. Most of our sales are generated by our direct sales force and are shipped and billed to hospitals or clinics throughout the world. In countries where we do not have a direct sales force, sales are primarily generated by shipments to distributors who, in turn, sell to hospitals and clinics. In those cases where our products are held on consignment at a hospital or clinic, we generate sales at the time the product is used in surgery rather than at shipment.

Cost of sales. We manufacture nearly all of the products that we sell. Our cost of sales consists primarily of manufacturing personnel, raw materials and components, depreciation of property and equipment, and other allocated manufacturing overhead, as well as freight expense we pay to ship products to customers.

[Table of Contents](#)

Sales and marketing. Our selling and marketing expense consists primarily of salaries, commissions, stock based compensation, travel and entertainment, attendance at medical society meetings, training programs, advertising and product promotions, direct mail, and other marketing costs.

General and administrative. General and administrative expense consists primarily of executive, finance and human resource expense, stock based compensation, legal and accounting fees, information technology expense, intangible amortization expense, and insurance expense.

Research and development. Research and development expense includes costs associated with the design, development, testing, enhancement, and regulatory approval of our products. It also includes costs associated with design and execution of clinical studies and regulatory submissions and costs to register, maintain, and defend our intellectual property.

Restructuring. Restructuring expense includes costs directly associated with distribution agreement termination expenses, severance, and retention costs for terminated employees, and other expenses associated with restructuring our operations.

Other income (expense). Other income (expense) primarily includes interest income and expense, investment impairment charges, foreign currency gains (losses), and other miscellaneous gains (losses).

Income tax expense. We are subject to federal and state income taxes for earnings generated in the U.S., which include operating losses in certain foreign jurisdictions for certain years depending on tax elections made, and foreign taxes on earnings of our wholly-owned German, French, Italian, and Japanese subsidiaries. Our consolidated tax expense is affected by the mix of our taxable income (loss) in the United States, Germany, France, Italy, and Japan, permanent items, discrete items, unrecognized tax benefits, and amortization of goodwill for U.S tax reporting purposes.

Results of Operations

Comparison of the year ended December 31, 2009, to the year ended December 31, 2008

The following tables set forth, for the periods indicated, our results of operations and the change between the specified periods expressed as a percent increase or decrease:

	<u>2009</u>	<u>2008</u>	<u>Percent</u>
		(\$ in thousands)	<u>change</u>
Net sales	\$ 50,908	\$ 48,720	4%
Net sales by product category:			
Endovascular	\$ 14,782	\$ 15,946	(7%)
Vascular	31,846	28,573	11%
General Surgery	<u>3,836</u>	<u>3,928</u>	<u>(2%)</u>
Total Branded Products	50,464	48,447	4%
OEM	444	273	63%
Total	<u>\$ 50,908</u>	<u>\$ 48,720</u>	<u>4%</u>
Net sales by geography:			
Americas	\$ 29,420	\$ 26,899	9%
International	<u>21,488</u>	<u>21,821</u>	<u>(2)%</u>
Total	<u>\$ 50,908</u>	<u>\$ 48,720</u>	<u>4%</u>

[Table of Contents](#)

Net sales. Net sales increased 4% to \$50.9 million in 2009 from \$48.7 million in 2008. Sales in our Vascular product category grew 11%, while sales in our Endovascular product category and General Surgery product categories decreased by 7% and 2%, respectively, from the previous year. New acquisitions and business development activities added 2% to year-over-year sales growth while changes in foreign currency exchange rates subtracted 2%. Excluding these effects, net sales for 2009 grew 4%. Sales increases in 2009 were largely driven by higher average selling prices across nearly all product lines, as well as an increase in our Vascular product category of \$3.3 million which included additional XenoSure Biologic Vascular Patch sales of \$1.1 million, increased valvulotomes sales of \$0.7 million and vascular catheter sales of \$0.5 million, as well as increases in all other product lines in the Vascular product category. These gains were partially offset by a \$1.2 million decrease in our Endovascular product category, primarily due to decreased TAArget Thoracic Stent Graft, Endologix Powerlink System, and AnastoClip Vessel Closure System sales, as well as the effect of negative currency exchange rate fluctuations of \$0.9 million. In 2009 the volatility of the euro as compared to the dollar significantly affected the value of our sales in Europe when translated into U.S. dollars. This affect may continue into 2010.

Our Endovascular product category declined to 29% of net sales in 2009 from 33% in the prior year. Our Endovascular product category represented 27% of our revenues for the three months ending December 31, 2009. Endovascular declines were driven in part by decreased sales from our TAArget thoracic and Endologix Powerlink stent graft offerings. TAArget stent graft results were due mainly to the retirement of our largest stent graft customer in the fourth quarter of 2009, as well as strong competitor product offerings. We expect that our Endovascular product category will continue to decrease as a percentage of our revenues in 2010, in part due to the loss of this key customer.

Direct-to-hospital net sales were 92% in 2009, up from 88% in 2008. The increase was largely due to strong results from our comparatively newer sales organizations in Italy and France and the termination of Edwards Lifesciences distribution of our AlboGraft Vascular Graft.

Net sales by geography. Net sales in the Americas increased \$2.5 million to \$29.4 million in 2009. The increase was mainly the result of higher average selling prices across nearly all product lines as well as the addition of \$1.1 million of sales of the XenoSure Biologic Vascular Patch. International net sales decreased \$0.3 million in 2009 to \$21.5 million. International sales were favorably impacted by sales growth of \$0.8 million at our Italian sales office, \$0.5 million at our French sales office, and \$0.3 million at our Japanese sales office. International sales were unfavorably impacted by the effect of negative currency exchange rate fluctuations of \$0.9 million and by a decrease in sales of our Endovascular product category of \$0.5 million.

International direct-to-hospital net sales increased to 83% in 2009, up from 73% in 2008. The increase was largely due to strong results from our comparatively newer sales organizations in Italy and France and the termination of Edwards' distribution of our AlboGraft Vascular Graft.

	<u>2009</u>	<u>2008</u>	<u>\$ Change</u>	<u>Percent change</u>
		(S in thousands)		
Gross profit	\$37,304	\$33,903	\$3,401	10.0%
Gross margin	73.3%	69.6%	*	3.7%

* Not a meaningful percentage relationship.

Gross profit. Gross profit increased 10% to \$37.3 million in 2009 from \$33.9 million in 2008 while our gross margin increased 3.7% to 73.3%. The gross margin increase was largely the result of improved manufacturing efficiencies, higher average selling prices across nearly all product lines, a reduction in inventory write-downs related to the redesign of our TAArget Thoracic Stent Graft product line in 2008, and our

[Table of Contents](#)

direct-to-hospital AlboGraft Vascular Graft transition in Europe which commenced on March 27, 2009. The increase was partially offset by negative currency exchange rate fluctuations.

	<u>2009</u>	<u>2008</u>	<u>\$ change</u>	<u>Percent change</u>	<u>2009 as a% of Revenue</u>	<u>2008 as a% of Revenue</u>
	(in thousands)					
Sales and marketing	\$ 17,710	\$ 19,762	\$ (2,052)	(10%)	35%	41%
General and administrative	9,852	9,999	(147)	(1%)	19%	21%
Research and development	5,910	5,328	582	11%	12%	11%
Restructuring charges	1,777	1,147	630	55%	3%	2%
Impairment charge	106	597	(491)	(82%)	0%	1%
	<u>\$35,355</u>	<u>\$ 36,833</u>	<u>\$ (1,478)</u>	<u>(4%)</u>	<u>69%</u>	<u>76%</u>

* Not a meaningful percentage relationship.

Sales and marketing. Sales and marketing expense decreased 10% to \$17.7 million in 2009, from \$19.8 million in 2008. Selling expense decreased \$1.6 million while marketing expense decreased \$0.5 million. Foreign currency exchange rate fluctuations reduced sales and marketing expense by \$0.3 million compared to the prior year. Selling expense decreases were driven largely by reduced sales commissions and payroll costs of \$0.8 million, decreased travel and entertainment expenses of \$0.4 million, and the effects of currency exchange rate fluctuations. Marketing expense decreases were largely the result of reduced advertising expenses of \$0.2 million, reduced advisory board expenses of \$0.2 million, and the effects of currency exchange rate fluctuations, and were partially offset by additional payroll costs of \$0.2 million. As a percentage of revenues, sales and marketing expense decreased to 35% in 2009 from 41% in the prior year. At the end of 2009, we employed 61 field sales representatives worldwide, as compared to 52 at the end of 2008. Selling expense was restrained in part by the adoption of a lower-cost compensation model for most new sales hires, and we expect to continue this hiring practice in 2010.

General and administrative. General and administrative expense decreased 1% to \$9.9 million in 2009 from \$10.0 million in 2008. The decrease was primarily due to a reduction in insurance premiums of \$0.2 million and was partially offset by increased amortization of \$0.1 million related to the termination of our AlboGraft Vascular Graft distribution agreement.

Research and development. Research and development expense increased 11% to \$5.9 million in 2009 from \$5.3 million in 2008. As a percentage of revenues, research and development expense increased to 12% in 2009 compared to 11% in 2008. The increase was driven by increased regulatory and clinical affairs related costs of \$0.7 million as well as higher product development expense of \$0.1 million, and was partially offset by a reduction in royalty expense of \$0.1 million, driven by reduced TAArget Thoracic Stent Graft and UniFit Abdominal Stent Graft sales, and in processing engineering expense of \$0.1 million. We had enrolled 47 patients in our UNITE clinical trial as of December 31, 2009 compared to 22 as of December 31, 2008. We anticipate that research and development expense will increase over time as more UNITE and ENTRUST Trial patients are enrolled, new products follow the regulatory pathways, and more product development is undertaken.

Restructuring. Restructuring charges increased to \$1.8 million in 2009 from \$1.1 million in 2008. In 2009, we incurred a \$1.8 million restructuring charge related to the March 27, 2009 termination of our AlboGraft Vascular Graft distribution agreement with Edwards Lifesciences. The transaction included the payment of \$3.5 million in exchange for the termination of the distribution agreement, as well as the acquisition of detailed customer information, transition services, and remaining product inventory. 2008 charges included \$0.7 million related to the early termination of our distributor in Italy, and \$0.4 million related to our reductions in force in February and July.

[Table of Contents](#)

Impairment charges. We incurred \$0.1 million of impairment charges in 2009 related to patents deemed to have no value based on future expected economic benefits. We recorded an impairment charge of \$0.6 million in 2008. The charge was the result of the write-down of intangible assets totaling \$0.5 million relating to a customer relationship at our Biomaterials subsidiary, as well as the write-down of selected patents of \$0.1 million.

Other income (expense). In 2009, net interest income was \$12,000 compared to \$0.5 million in 2008. The decrease was a result of an unfavorable interest rate market and the allocation of our portfolio to low risk investments. Foreign exchange gains for 2009 were \$0.3 million compared to foreign exchange losses of \$0.1 million in 2008. Foreign exchange gains are due to the comparative weakening of the dollar versus the euro during the financial period. Other income (expense) for 2009 was primarily due to losses on the disposal of capital equipment of \$17,000. In 2008, we recognized the write-down of portfolio investments totaling \$0.2 million which was attributed to the other-than-temporary decline in one specific asset backed security which we held as available-for-sale in our marketable securities portfolio

Income tax expense. We recorded a provision for taxes of \$0.6 million in 2009 compared to \$0.5 million in 2008 on pre-tax income of \$2.2 million in 2009 and on a pre-tax loss of \$2.8 million in 2008. The 2009 provision was comprised of taxes on profits on certain of our foreign subsidiaries that are profitable, deferred tax liabilities related to the amortization of goodwill for U.S. tax purposes which cannot be used to reduce existing deferred tax assets, and the alternative minimum tax. Our effective tax rate differed from the U.S. statutory tax rate principally due to the utilization of net operating loss carryforwards. While it is often difficult to predict the final outcome or timing of the resolution of any particular tax matter, we believe that our tax reserves reflect the probable outcome of known contingencies. In 2009, we utilized \$4.8 million of our U.S net operating loss carryforwards. During 2010, we could utilize the remaining \$1.8 million of U.S net operating loss carryforwards, which may result in an increased provision for taxes on a prospective basis.

We provide a full valuation allowance for net deferred tax assets, as we believe it is more likely than not that the future tax benefits from accumulated net operating losses and deferred taxes will not be realized. However, it is possible that the realization of future profits could result in the reversal of a significant portion, or all of the valuation allowance, which would then be recorded as a tax benefit in the consolidated statements of operations in the period of reversal.

Comparison of the year ended December 31, 2008, to the year ended December 31, 2007

The following table sets forth, for the periods indicated, our results of operations and the change between the specified periods expressed as a percent increase or decrease:

	<u>2008</u>	<u>2007</u>	<u>Percent change</u>
Net sales	\$ 48,720	(\$ in thousands) \$ 41,446	18%
Net sales by product category:			
Endovascular	\$ 15,946	\$ 14,143	13%
Vascular	28,573	23,420	22%
General Surgery	3,928	3,883	1%
Total Branded Products	48,447	41,446	17%
OEM	273	—	*
Total	<u>\$ 48,720</u>	<u>\$ 41,446</u>	<u>18%</u>
Net sales by geography:			
United States and Canada	\$26,899	\$25,141	7%
Outside the United States and Canada	21,821	16,305	34%
Total	<u>\$ 48,720</u>	<u>\$ 41,446</u>	<u>18%</u>

* Not a meaningful percentage relationship.

[Table of Contents](#)

Net sales. Net sales increased 18% to \$48.7 million in 2008 from \$41.4 million in 2007. Sales in our Endovascular product category increased by 13%, while sales in our Vascular and General Surgery product categories grew by 22% and 1%, respectively, over the previous year. New acquisitions and business development activities added 7% to year-over-year sales growth, changes in foreign currency exchange rates added 4% and organic sales increased 7%. Sales increases were driven in part by the inclusion of our 2007 acquisitions excluding the effects of currency exchange rate fluctuations of approximately \$3.0 million, higher average selling prices, the favorable impact of foreign currency fluctuations of approximately \$1.5 million, and significant sales growth in various international markets, including the United Kingdom, Japan and France, and were partially offset by a decline in unit sales in several of our product lines. Due to volatility of the euro as compared to the dollar in 2008 we experienced significant changes throughout the year in the value of our sales in Europe when translated into U.S. dollars.

Net sales by geography. Net sales in the United States and Canada increased 7% to \$26.9 million in 2008, as compared to \$25.1 million in 2007. The increase was driven primarily by the full-year inclusion of our 2007 acquisitions of the LeverEdge Contrast Injector, aSpire Stent, and EndoRE product lines, as well as higher average selling prices and strong results from our valvulotome and embolectomy catheter product lines. Net sales outside of the United States and Canada increased 34% to \$21.8 million for 2008 compared to \$16.3 million in 2007. The increase outside the United States and Canada was driven primarily by growth within our endovascular product category which includes our next generation TAArget and UniFit stent grafts, the Powerlink System, the inclusion of AlboGraft Vascular Graft sales to Edwards Lifesciences, the impact of foreign currency fluctuations of approximately \$1.5 million and strong results from our French, Japanese and U.K. subsidiaries. Direct-to-hospital net sales represented 73% of the total net sales outside the United States and Canada in 2008, as compared to 74% in 2007.

	<u>2008</u>	<u>2007</u>	<u>\$ Change</u>	<u>Percent change</u>
	(\$ in thousands)			
Gross profit	\$33,903	\$30,707	\$3,196	10.4%
Gross margin	69.6%	74.1%	*	(4.5)%

* Not a meaningful percentage relationship.

Gross profit. Gross profit increased 10% to \$33.9 million in 2008 from \$30.7 million in 2007. The gross profit increase was driven primarily by greater net sales, higher average selling prices across several product categories, and favorable foreign currency fluctuations for the full year. The improvement was partially offset by manufacturing inefficiencies at our Burlington manufacturing facility, the write-off of \$1.0 million of excess and obsolete inventory largely related to product improvements related to our TAArget and UniFit stent grafts and our TT Tortuous Tracker Delivery System, and the inclusion of Biomateriali in our consolidated results. Gross profit in 2007 was negatively impacted by a \$0.1 million inventory charge in December related to the Biomateriali acquisition. The total gross margin as a percentage of net sales was 69.6% in 2008, compared with 74.1% in 2007. The decrease from 2007 was largely a result of the inclusion of the AlboGraft sales in 2008, the write-off of \$1.0 million of excess and obsolete inventory largely related to product improvements, and continued strength in our international business; partially offset by higher average selling prices across several product categories.

	<u>2008</u>	<u>2007</u>	<u>\$ change</u>	<u>Percent change</u>	<u>2008 as a % of Revenue</u>	<u>2007 as a % of Revenue</u>
	(\$ in thousands)					
Sales and marketing	\$ 19,762	\$ 19,443	\$ 319	2%	41%	47%
General and administrative	9,999	9,534	465	5%	21%	23%
Research and development	5,328	4,591	737	16%	11%	11%
Purchased research and development	—	373	(373)	*	0%	1%
Restructuring charges	1,147	1,042	105	*	2%	3%
Impairment charge	597	7	590	*	1%	0%
	<u>\$ 36,833</u>	<u>\$34,990</u>	<u>\$ 1,843</u>	<u>5%</u>	<u>76%</u>	<u>84%</u>

* Not a meaningful percentage relationship.

[Table of Contents](#)

Sales and marketing. Sales and marketing expense increased 2% to \$19.8 million in 2008, from \$19.4 million in 2007. The increase was driven primarily by the addition of our direct sales efforts in France and Italy, as well as foreign currency exchange rate fluctuations of \$0.5 million, and largely offset by a decrease in the total number of sales and marketing professionals and associated management during 2008. At the end of 2008, we employed 52 field sales representatives and 11 sales managers worldwide, as compared to 57 and 17, respectively, at the end of 2007.

General and administrative. General and administrative expense increased 5% to \$10.0 million in 2008 from \$9.5 million in 2007. The increase was primarily due to the inclusion of Biomateriali in our consolidated results of \$0.6 million, as well as the addition of our French and Italian direct sales efforts, which require local administrative support, and negative foreign currency exchange rate fluctuations of \$0.1 million, and was partially offset by a decrease in the number of general and administrative personnel.

Research and development. Research and development expense increased 16% to \$5.3 million in 2008 from \$4.6 million in 2007. The increase was driven by increases in regulatory and clinical expense and personnel costs, the inclusion of Biomateriali in the consolidated results, increased royalties of \$0.1 million, higher product development costs largely related to the introduction of the TT delivery system, and foreign currency exchange rate fluctuations of \$0.1 million. These increases were partially offset by decreases in process development costs.

Restructuring. Restructuring charges increased to \$1.1 million in 2008 from \$1.0 million in 2007. 2008 charges included \$0.7 million related to the early termination of our distributor in Italy, and \$0.4 million related to our reductions in force in February and July. Expenses for 2007 included charges related to the buy-out of our distributors in Ireland and Italy due to our decision to sell directly to hospitals in those countries.

Purchased research and development. In conjunction with a technology acquisition in December 2007, we acquired in-process research and development with a fair value of \$0.4 million that was expensed on the date of acquisition, as the acquired technology had not yet reached technological feasibility and had no alternative future use to us at the date of acquisition.

Impairment charges. We recorded an impairment charge of \$0.6 million in 2008. The charge was the result of the write-down of intangible assets totaling \$0.5 million relating to a customer relationship at our Biomateriali subsidiary, as well as the write-down of selected patents of \$0.1 million.

Other income (expense). In 2008 interest income was \$0.5 million compared to \$1.3 million in 2007. The change was due to a decrease in average cash on hand throughout the year, significantly reduced yields on portfolio investments, the write-down of portfolio investments of \$0.2 million which was attributed to the other-than-temporary decline in one specific asset backed security which we held as available-for-sale in our marketable securities portfolio at December 31, 2008, and increased interest expense associated with acquisition related debt at our Biomateriali subsidiary of \$0.1 million. Losses on foreign currency exchange were due to a relative decrease in the strength of the euro as compared to the U.S. dollar. Other income (expense) for 2008 was primarily due to losses on the disposal of capital equipment of \$41,000.

Income tax expense. We recorded a provision for taxes of \$0.5 million in 2008 compared to \$0.2 million in 2007 despite pre-tax losses of \$2.8 million in 2008 and \$2.7 million in 2007. The 2008 provision was the result of a number of factors, including taxes on profits on certain of our foreign subsidiaries that are profitable, deferred tax liabilities related to the amortization of goodwill for U.S. tax purposes, which cannot be used to reduce existing deferred tax assets, and effects of changes in uncertain tax positions.

Liquidity and Capital Resources

At December 31, 2009, our cash, cash equivalents and marketable securities were \$24.0 million as compared to \$21.3 million at December 31, 2008. Our cash and cash equivalents are highly liquid investments

[Table of Contents](#)

with maturities of 90 days or less at the date of purchase and consist of time deposits, fully collateralized overnight repurchase agreements, and U.S. government obligations, and are stated at cost, which approximates fair value. Our marketable securities are primarily marketable debt securities, corporate bonds, and U.S. government securities that we classify as available-for-sale and are carried at fair market value. We did not hold any mortgage asset-backed or auction-rate securities in our investment portfolio as of December 31, 2009.

The majority of our marketable securities have remaining maturities of two years or less. The weighted average maturity of the portfolio was 1.5 months as of December 31, 2009, a reduction of 5.0 months from December 31, 2008. As of December 31, 2009, our investment portfolio included \$0.4 million of asset-backed securities collateralized by credit card debt, and auto loans. In order to limit our credit risk exposure, we reduced our asset-backed securities holdings in 2009 by \$1.2 million, from \$1.6 million as of December 31, 2008. In the event of a temporary decline in market value, we have the intent and ability to hold our debt investments for a sufficient period of time to allow for recovery of the principal amounts invested. We continually monitor the asset allocation of our holdings in an attempt to mitigate our credit and interest rate exposures, and we intend to continue to closely monitor developments in the credit markets and make appropriate changes to our investment policy as necessary. Although the volatility in the current global financial markets can affect the liquidity and valuation of selected securities, we do not anticipate that these events will result in significant portfolio liquidity limitations or write-downs, although we can make no assurances to this effect.

Operating and Capital Expenditure Requirements

We require cash to pay our operating expenses, make capital expenditures, and pay our long-term liabilities. Since our inception, we have funded our operations through private and public placements of equity securities, short-term borrowings, and funds generated from our operations.

For the year ended December 31, 2009, we recognized operating income of \$1.9 million, net of a \$1.8 million restructuring charge. Although it is our intention to generate an operating profit on an ongoing basis, excluding the impact of acquisitions and distributor terminations, there can be no assurance that we will generate an operating profit in the future due to our continued investment in growing our business. We expect to fund any increased costs and expenditures from our existing cash and cash equivalents and marketable securities, though our future capital requirements depend on numerous factors. These factors include, but are not limited to, the following:

- the revenues generated by sales of our products;
- the costs associated with expanding our manufacturing, marketing, sales, and distribution efforts;
- the earn-out payments due related to The UnBalloon Non-Occlusive Modeling Catheter;
- the rate of progress and cost of our research and development activities;
- litigation;
- the costs of obtaining and maintaining FDA and other regulatory clearances of our products and products in development;
- the effects of competing technological and market developments; and
- the number, timing, and nature of acquisitions and other strategic transactions.

Our cash balances may decrease as we continue to use cash to fund our operations, make acquisitions, make purchases under our share repurchase program, and make deferred payments related to prior acquisitions. We believe that our cash, cash equivalents, investments and the interest we earn on these balances will be sufficient to meet our anticipated cash requirements for at least the next 12 months. If these sources of cash are insufficient to satisfy our liquidity requirements beyond the next 12 months, we may seek to sell additional equity or debt securities or borrow against our credit facility. The sale of additional equity and debt securities may result in

[Table of Contents](#)

dilution to our stockholders. If we raise additional funds through the issuance of debt securities, such securities could have rights senior to those of our common stock and could contain covenants that would restrict our operations. We may require additional capital beyond our currently forecasted amounts. Any such required additional capital may not be available on reasonable terms, if at all. Insufficient funds may require us to delay, scale back, or eliminate some or all of our business operations or may adversely affect our ability to operate as a going concern.

Credit Facility

We have a revolving line of credit with Brown Brothers Harriman & Co under which our borrowing capacity is \$10 million, with a maximum principal amount of any letters of credit issued as part of this facility of \$3 million. In August 2009, the maturity date for amounts borrowed was extended to August 2011. Loans made under this revolving line of credit bear interest at LIBOR plus 200 basis points or the bank's base rate, at our discretion. Borrowings under this line of credit are collateralized by substantially all of our assets. As of December 31, 2009, we had no borrowing outstanding under this line of credit. The loan agreement requires that we meet certain financial and operating covenants including a required leverage ratio and minimum tangible net worth. As of December 31, 2009, we were in compliance with these covenants.

Cash Flows

	Year ended December 31,		Net Change
	2009	2008	
Cash and cash equivalents	\$23,192	\$15,895	\$7,297
Cash flows provided by (used in):			
Operating activities	\$5,440	\$581	\$4,563
Investing activities	2,182	9,013	(6,831)
Financing activities	(376)	(24)	(352)

Operating activities. Net cash provided by operating activities was \$5.4 million in 2009 and consisted of the \$1.6 million net income, adjusted for non-cash items of \$3.4 million (including depreciation and amortization of \$1.4 million, stock-based compensation of \$1.0 million, provision for inventory write-offs of \$0.4 million, provision for deferred income taxes of \$0.2 million, an intangibles impairment charge of \$0.1 million and \$0.1 million in accounts receivable loss provisions) and net cash provided by changes in working capital of \$0.4 million. The net cash provided by changes in working capital was principally the result of a reduction in prepaid assets and in inventories and was partially offset by increased accounts receivable.

Net cash provided by operating activities was \$0.6 million in 2008 and consisted of a \$3.3 million net loss adjusted for non-cash related items of \$4.4 million (including depreciation and amortization of \$1.6 million, provision for inventory write-offs of \$1.0 million, stock-based compensation of \$0.8 million, intangibles impairment charges of \$0.6 million, investment impairment write-offs of \$0.2 million, and a deferred income tax provision of \$0.2 million, and was partially offset by the accretion of discounts on marketable securities of \$0.1 million). Net cash used from changes in operating assets and liabilities was \$0.6 million. The net cash used from changes in operating assets and liabilities was primarily a result of the payment of restructuring-related liabilities and an overall decrease in operating expense spending in 2008, offset by reduced levels inventory of \$1.5 million.

Investing activities. Net cash provided by investing activities was \$2.2 million in 2009. This was primarily due to sales and maturities of marketable securities of \$4.6 million, the purchase of technology and other intangible assets of \$1.0 million, payments made related to prior year acquisitions of \$0.8 million, and purchases of property and equipment of \$0.6 million.

[Table of Contents](#)

Net cash provided by investing activities was \$9.0 million in 2008. This was primarily due to sales and maturities of marketable securities of \$14.9 million, and partially offset by purchases of marketable securities of \$4.3 million, purchases of property and equipment of \$0.6 million, payments made related to prior year acquisitions of \$0.8 million, and the purchase of technology and other intangible assets of \$0.1 million. The net proceeds from the sale and maturities of marketable securities of \$10.6 million were reinvested into cash equivalents such as time deposits and fully collateralized overnight repurchase agreements.

In December 2007, we purchased certain patent applications and in-process research and development which included earn-out payments associated with the commercialization of the device in the European Union and the United States as part of the consideration. The earn-out payments are payable quarterly at approximately the rate of two times sales for the four quarters. The European earn-out period is measured from December 23, 2009 through December 22, 2010. We recorded an intangible asset and a liability of approximately \$5,000 related to the 2009 sales volume. The United States earn-out period is measured over four quarters following the first commercial sale in the United States. We anticipate that the payment of resulting future earn-out obligations may impact cash flow from investing activities in 2010.

Financing activities. Net cash used in financing activities was \$0.4 million in 2009. This was primarily due to the purchase of \$0.5 million of treasury stock under our stock repurchase plan and the purchase of \$0.2 million of treasury stock to cover withholding taxes of restricted stock award vesting's and was partially offset by \$0.2 million from the exercise of stock options and \$0.1 million from an Italian government loan program which we assumed as part of our purchase of Biomateriali. We may purchase an additional \$1.5 million of treasury stock under our stock repurchase plan through December 31, 2010.

Net cash used in financing activities was \$24,000 in 2008. This was primarily due to the repayment of the revolving line of credit at our Italian subsidiary of \$0.3 million, and offset by proceeds from the issuance of common stock related to the exercise of common stock options and our employee purchase plan of \$0.3 million.

Contractual obligations. Our principal contractual obligations consist of operating leases, inventory purchase commitments, and income tax obligations for unrecognized tax benefits. The following table summarizes our commitments to settle contractual obligations as of December 31, 2009:

<u>Contractual obligations</u>	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years</u>	<u>3-5 years</u>
		(in thousands)		
Operating leases	\$ 1,685	\$ 990	\$ 672	\$ 23
Purchase commitments for inventory	17,738	4,405	9,161	4,172
Unrecognized tax benefits	299	299	—	—
Total contractual obligations	<u>\$19,722</u>	<u>\$5,694</u>	<u>\$ 9,833</u>	<u>\$4,195</u>

The commitments under our operating leases consist primarily of lease payments for our Burlington, Massachusetts, corporate headquarters and manufacturing facility and a separate manufacturing and storage facility in Burlington, Massachusetts, each expiring in 2011; our Sulzbach, Germany office, expiring in 2010; and our Tokyo, Japan office, expiring in 2010. On March 23, 2010, we extended our lease of our manufacturing facility in Burlington, Massachusetts through 2017. Additionally, we entered into a lease for an additional 16,629 square feet in an adjacent facility in Burlington, Massachusetts through 2017 while terminating the lease to our Burlington storage facility.

The purchase commitments for inventory are to be used in operations over the normal course of business and do not represent excess commitments or loss contracts.

Critical Accounting Policies and Estimates

We have adopted various accounting policies to prepare our consolidated financial statements in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. Our most significant accounting policies are described in note 1 to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The preparation of our consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes. Our estimates and assumptions, including those related to bad debts, inventories, intangible assets, sales returns and discounts, and income taxes are reviewed on an ongoing basis and updated as appropriate. Actual results could differ from those estimates.

Certain of our more critical accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. These judgments are based on our historical experience, terms of existing contracts, observance of trends in the industry, and information provided by physicians who use our products and information available from other outside sources, as appropriate. Different, reasonable estimates could have been used in the current period. Additionally, changes in accounting estimates are reasonably likely to occur from period to period. Both of these factors could have a material impact on the presentation of our financial condition, changes in financial condition, or results of operations.

We believe that the following financial estimates and related accounting policies are both important to the portrayal of our financial condition and results of operations and require subjective or complex judgments. Further, we believe that the items discussed below are properly recorded in our consolidated financial statements for all periods presented. Management has discussed the development, selection and disclosure of our most critical financial estimates with the audit committee of our board of directors and our independent registered public accounting firm. The judgments about those financial estimates are based on information available as of the date of our consolidated financial statements. Those financial estimates and related policies include:

Revenue Recognition

Our revenue is derived primarily from the sale of disposable or implantable devices used during vascular surgery. We sell directly to hospitals and to distributors, as described below, and, during the periods presented in our consolidated financial statements, entered into consigned inventory arrangements with either hospitals or distributors on a limited basis.

We recognize revenue when four basic criteria are met: (1) Persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. We generally use customer purchase orders or contracts to determine the existence of an arrangement. Substantially all sales transactions are based on prices that are determinable at the time that the customer's purchase order is accepted by us. In order to determine whether collection is probable, we assess a number of factors, including past transaction history with the customer and the creditworthiness of the customer. If we determine that collection is not reasonably assured, we would defer the recognition of revenue until collection becomes reasonably assured, which is generally upon receipt of payment. We provide for product returns at the time revenue is recognized based on our historical return product history.

Accounts Receivable

Our accounts receivable are with customers based in the United States and internationally. Accounts receivable generally are due within 30 to 90 days of invoice and are stated at amounts due from customers, net of an allowance for doubtful accounts and sales returns, other than in certain European markets where longer payment terms are customary. We perform ongoing credit evaluations of the financial condition of our customers and adjust credit limits based upon payment history and the current creditworthiness of the customers, as

[Table of Contents](#)

determined by a review of their current credit information. We continuously monitor aging reports, collections, and payments from customers, and maintain a provision for estimated credit losses based upon historical experience and any specific customer collection issues we identify.

We write off accounts receivable when they become uncollectible. While such credit losses have historically been within our expectations and allowances, we cannot guarantee the same credit loss rates will be experienced in the future. The allowance for doubtful accounts is our best estimate of the amount of probable credit losses in our existing accounts receivable. We review our allowance for doubtful accounts on a monthly basis and all past due balances are reviewed individually for collectability. The provision for the allowance for doubtful accounts is recorded in general and administrative expenses.

Inventory

Inventory consists of finished products, work-in-process, and raw materials. We value inventory at the lower of cost or market value. Cost includes materials, labor, and manufacturing overhead and is determined using the first-in, first-out (FIFO) method. On a quarterly basis, we review inventory quantities on hand and analyze the provision for excess and obsolete inventory based primarily on product expiration dating and our estimated sales forecast, which is based on sales history and anticipated future demand. Our estimates of future product demand may not be accurate, and we may understate or overstate the provision required for excess and obsolete inventory. Accordingly, any significant unanticipated changes in demand could have a significant impact on the value of our inventory and results of operations.

Stock-based Compensation

We recognize, as expense, the estimated fair value of all share-based payments to employees which is determined using the Black-Scholes option pricing model. We have elected to recognize the compensation cost of all share-based awards on a straight-line basis over the vesting period of the award. In periods that we grant stock options, fair value assumptions are based on volatility, interest, dividend yield, and expected term over which the stock options will be outstanding. The computation of expected volatility is based on the historical volatility of the company's stock. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury risk-free interest rate in effect at the time of grant. The expected lives of the options were estimated using the simplified method for "plan vanilla" options. Computation of expected forfeitures is based on historical forfeiture rates of our stock options. We used an expected forfeiture rate of approximately 18%, 20%, and 20% for 2009, 2008 and 2007, respectively. Share-based compensation charges are recorded net of the estimated forfeitures and will be adjusted in future periods to reflect the results of actual forfeitures and vesting.

As disclosed more fully in the notes of our financial statements, we recorded expense of approximately \$1.0 million in connection with share-based payment awards for the year ended December 31, 2009. The future expense of non-vested share-based awards of approximately \$1.9 million is to be recognized over a weighted-average period of 3.5 years. During 2009, we granted stock options at a weighted average exercise price of \$3.12 and restricted stock units with fair value weighted average price of \$2.99.

Valuation of Goodwill, Other Intangibles

When we acquire a business, the purchase price is allocated, as applicable, among acquired tangible net assets, identifiable intangible assets, and goodwill as required by U.S. GAAP. Goodwill represents the excess of the aggregate purchase price over the fair value of net assets of the acquired businesses. Goodwill is tested for impairment annually or more frequently if changes in circumstance or the occurrence of events suggest impairment exists. We evaluate the December 31 balance of the carrying value of goodwill based on a single reporting unit. The first step of our goodwill impairment test, used to identify potential impairment, compares the fair value of our reporting unit with its carrying amount, including goodwill. If the fair value of our reporting unit exceeds its carrying amount, the goodwill of the reporting unit is considered not impaired, and thus the second

[Table of Contents](#)

step of the impairment test, used to measure the amount of the impairment loss, is unnecessary. If the carrying amount of our reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test, used to measure the amount of impairment loss, compares the implied fair value of the reporting unit goodwill as of the date of the impairment review with the carrying amount of that goodwill. The implied fair value of our goodwill is determined on the same basis as the amount of goodwill recognized in connection with a business combination. Specifically, we allocate the fair value of our reporting unit to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination as of the date of the impairment review and as if the fair value of the reporting unit was the price paid to acquire the reporting unit. The excess of the fair value of a reporting unit over the amounts assigned to its assets and liabilities is the implied fair value of goodwill. If the carrying amount of the reporting unit goodwill exceeds the implied fair value of that goodwill, an impairment loss shall be recognized in an amount equal to that excess. We have determined that no impairment charges were required during the year ended December 31, 2009 as the market capitalization of the Company as a whole has exceeded the carrying amount, and on that basis we concluded that goodwill was not impaired. Goodwill was \$11.0 million as of December 31, 2008 and 2009. Our annual impairment testing indicated no significant risk of impairment based upon changes in value that are reasonably likely to occur. However, changes in these estimates and assumptions could materially affect the estimated fair value of our reporting unit.

Other intangible assets consist primarily of purchased developed technology, patents, customer relationships, and trademarks and are amortized over their estimated useful lives, ranging from two to 17 years. We review intangible assets quarterly to determine if any adverse conditions exist for a change in circumstances has occurred that would indicate impairment. Conditions that may indicate impairment include, but are not limited to, a significant adverse change in legal factors or business climate that could affect the value of the asset, a change in the operating cash flows associated with the asset, or adverse action or assessment by a regulator. If an impairment indicator exists we test the intangible asset for recoverability. If the carrying value of the intangible asset exceeds the undiscounted cash flows expected to result from the use and eventual disposition of the intangible asset, we will write the carrying value down to the fair value in the period identified. We generally calculate fair value of our intangible assets as the present value of estimated future cash flows we expect to generate from the asset using a risk-adjusted discount rate. In determining our estimated future cash flows associated with our intangible assets, we use estimates and assumptions about future revenue contributions, cost structures, and remaining useful lives of the asset. These estimates and assumptions require significant judgment and actual results may differ from assumed or estimated amounts. Other intangible assets, net of accumulated amortization, were \$2.9 million as of December 31, 2008, and \$3.3 million as of December 31, 2009. We recognized impairment charges on our intangible assets of \$0.6 million in 2008 and \$0.1 million in 2009.

Contingencies

In the normal course of business, we are subject to proceedings, lawsuits, and other claims and assessments for matters related to, among other things, patent infringement, business acquisitions, employment, and product recalls. We assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required, if any, for these contingencies is made after careful analysis of each individual issue. The required reserves may change in the future due to new developments in each matter or changes in approach such as a change in settlement strategy in dealing with these matters. We record charges for the costs we anticipate incurring in connection with litigation and claims against us when we determine a loss is probable and we can reasonably estimate these costs. During the years ended December 31, 2007, 2008, and 2009, we were not subject to any material litigation, claims or assessments.

Restructuring

We record restructuring charges incurred in connection with consolidation or relocation of operations, exited business lines, or shutdowns of specific sites. These restructuring charges, which reflect our commitment

[Table of Contents](#)

to a termination or exit plan that will begin within twelve months, are based on estimates of the expected costs associated with site closure, legal matters, contract terminations, or other costs directly related to the restructuring. If the actual cost incurred exceeds the estimated cost, an additional charge to earnings will result. If the actual cost is less than the estimated cost, a credit to earnings will be recognized.

Income Taxes

As part of the process of preparing our consolidated financial statements we are required to determine our income taxes in each of the jurisdictions in which we operate. This process involves estimating our actual current tax expense together with assessing temporary differences resulting from recognition of items for income tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet. We must then assess the likelihood that our deferred tax assets will be recovered from taxable income during the carryback period or in the future; and to the extent we believe that recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase this allowance in a period, we must reflect this increase as an expense within the tax provision in the statement of operations. We do not provide for income taxes on undistributed earnings of foreign subsidiaries, as our current intention is to permanently reinvest these earnings.

We recognize, measure, present and disclose in our financial statements, uncertain tax positions that we have taken or expects to take on a tax return. We operate in multiple taxing jurisdictions, both within the United States and outside of the United States and may be subject to audits from various tax authorities regarding transfer pricing, the deductibility of certain expenses, intercompany transactions, and other matters. Within specific countries, we may be subject to audit by various tax authorities operating within the country and may be subject to different statutes of limitation expiration dates. Management's judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities, liabilities for uncertain tax positions, and any valuation allowance recorded against our net deferred tax assets. We will continue to monitor the realizability of our deferred tax assets and adjust the valuation allowance accordingly. We have recorded a valuation allowance on our net deferred tax assets of \$6.5 million in 2009 and \$5.4 million in 2008.

Marketable Securities

Our investments consist primarily of marketable debt securities and U.S. government securities, and are classified as available-for-sale and are carried at fair market value at December 31, 2009. The unrealized gains (losses) on available-for-sale securities are recorded in accumulated other comprehensive income (loss). We consider all highly liquid investments with maturities of 90 days or less at the time of purchase to be cash equivalents, and investments with maturities of greater than 90 days at the time of purchase to be short-term investments. When a marketable security incurs a significant unrealized loss for a sustained period of time, we review the instrument to determine if it is other-than-temporarily impaired. If we conclude an instrument is other-than-temporarily impaired, we record the unrealized loss in the consolidated statement of operations.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of December 31, 2009. We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts. As a result, we are not materially exposed to any financing, liquidity, market, or credit risk that could arise if we had engaged in these relationships.

Recent Accounting Pronouncements

In December 2007 the Financial Accounting Standards Board (the FASB) revised the accounting rules concerning business combinations. This revised guidance requires the acquiring entity in a business combination to recognize the full fair value of assets acquired and liabilities assumed in the transaction; requires certain contingent assets and liabilities acquired to be recognized at their fair values on the acquisition date; requires contingent consideration to be recognized at its fair value on the acquisition date and changes in the fair value to be recognized in earnings until settled; requires the expensing of most transaction and restructuring costs; and generally requires the reversals of valuation allowances related to acquired deferred tax assets and changes to acquired income tax uncertainties to also be recognized in earnings. The revised guidance was effective for business combination transactions consummated after December 31, 2008. There was no impact upon adoption; however, the rule changes may materially affect the accounting for any future business combinations.

In December 2007, the FASB issued new rules on noncontrolling interests in consolidated financial statements. The noncontrolling interest guidance changed the accounting for minority interests, which are reclassified as noncontrolling interests and classified as a component of equity. We adopted this guidance effective January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In February 2008, the FASB delayed the effective date of the fair value accounting standard for all nonfinancial assets and nonfinancial liabilities, except for those that are recognized or disclosed at fair value in the financial statements on a recurring basis. The Company adopted the provisions of the standard for nonfinancial assets and nonfinancial liabilities as of January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In March 2008, the FASB issued a pronouncement pertaining to disclosures about derivative instruments and hedging activities. This guidance requires disclosures of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. We adopted this guidance effective January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In April 2008 the FASB provided guidance for determining the useful life of recognized intangible assets and to improve consistency between the period of expected cash flows used to measure the fair value of a recognized intangible asset and the useful life of the intangible asset. We adopted this guidance effective January 1, 2009 and will apply its provisions prospectively to recognized intangible assets acquired after that date. The adoption did not have an effect on our consolidated results of operations or financial condition.

In April 2009, the FASB issued guidance on the recognition and presentation of other-than-temporary impairments. This guidance amends the prior other-than-temporary impairment guidance for certain debt securities and will require the investor to assess the likelihood of selling the debt security prior to recovery of its cost basis. If an investor is able to meet the criteria to assert that it does not intend to sell the debt security and more likely than not will not be required to sell the debt security before its anticipated recovery, impairment charges related to credit losses would be recognized in earnings whereas impairment charges related to non-credit losses would be reflected in other comprehensive income. We elected early adoption of this rule in the first quarter of 2009. The adoption of the new other-than-temporary guidance had no impact on our consolidated results of operations or financial condition.

In May 2009, the FASB issued a pronouncement on subsequent event accounting that establishes the period after the balance sheet date during which management shall evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements; the circumstances under which an entity shall recognize events or transactions occurring after the balance sheet date in its financial statements; and the

[Table of Contents](#)

disclosures that an entity shall make about events or transactions that occurred after the balance sheet date. We adopted the pronouncement for the our second quarter 2009, and there was no effect from adoption.

In June 2009, the FASB issued guidance on the FASB Accounting Standards Codification and hierarchy of generally accepted accounting principles. The FASB Accounting Standards Codification (the Codification), is the single source of authoritative nongovernmental generally accepted accounting principles in the U. S. GAAP. The Codification is effective for interim and annual periods ending after September 15, 2009. The adoption of the Codification had no impact on our consolidated results of operations or financial condition.

In September 2009, the Emerging Issues Task Force issued the new rules pertaining to the accounting for revenue arrangements with multiple deliverables. The new rules provide an alternative method for establishing fair value of a deliverable when vendor specific objective evidence cannot be determined. The guidance provides for the determination of the best estimate of selling price to separate deliverables and allows the allocation of arrangement consideration using this relative selling price model. The guidance supersedes the prior multiple element revenue arrangement accounting rules that we previously used. The new guidance is effective for fiscal years beginning on or after June 15, 2010 and can be early or retrospectively adopted. We have elected to adopt the new revenue recognition guidance retrospectively as of January 1, 2009. The adoption of the new revenue recognition guidance had no impact on our consolidated results of operations or financial condition as we generally do not enter into multiple element revenue arrangements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

This item is not applicable to us as a smaller reporting company.

Item 8. Financial Statements and Supplementary Data

See the consolidated financial statements filed as part of this Annual Report on Form 10-K as listed under Item 15 below.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not Applicable.

Item 9AT. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Based on their evaluation as of December 31, 2009, our Chief Executive Officer and Chief Financial Officer, with the participation of management, have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934) were effective at reasonable assurance levels.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

Management assessed the effectiveness of our internal controls over financial reporting as of December 31, 2009. Management based its assessment on criteria established in the *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management's assessment included evaluation of elements such as the design and operating effectiveness of key financial reporting controls, process documentation, accounting policies, and our overall control environment.

[Table of Contents](#)

Based on this assessment under the criteria set forth in the *Internal Control—Integrated Framework*, management has concluded that our internal control over financial reporting was effective as of December 31, 2009.

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit us to provide only management's report in this Annual Report on Form 10-K.

Pursuant to Item 308T of Regulation S-K, this management's report on internal control over financial reporting shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section.

Changes in Internal Control over Financial Reporting

There was no change in the our internal control over financial reporting that occurred during the fiscal quarter ended December 31, 2009, that has materially affected, or is reasonably likely to materially affect our internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

[Table of Contents](#)

Item 9B. Other Information

On March 23, 2009, we entered into a series of agreements with Roger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates (Northwest Associates) amending and extending the lease for our principal executive, distribution and manufacturing operations in Burlington, Massachusetts and entering into a substantially co-terminus lease agreement for space in a building on a neighboring parcel. We intend to connect these buildings via a covered walkway and treat both buildings as a single operating facility that will continue to serve as our worldwide headquarters.

More specifically, we entered into a Fifth Amendment to Lease with Northwest Associates (the Amendment) for our worldwide headquarters at 63 Second Avenue, Burlington, Massachusetts, pursuant to which we lease a 27,098 square foot facility. The Amendment extends the term of this lease from 2011 until approximately 2017, with the precise date to be determined by reference to the commencement date of our lease of space in the facility located at 53 Second Avenue, Burlington, Massachusetts. The Amendment reduces the monthly base rental payment from approximately \$25,000 to approximately \$20,000. In addition to base rent, we will pay the annual real estate taxes and most operating expenses of the building. The Amendment also makes certain other amendments to the terms of the original lease to be consistent with the terms of the new 53 Second Avenue lease.

We also entered into a new Lease (the Lease) with Northwest Associates, initially for 16,629 square foot facility at 53 Second Avenue, Burlington, Massachusetts, for a term of seven years, expected to commence in 2010 upon the completion of a build-out of the new facility. The Lease requires Northwest Associates to contribute up to \$100,000 to the build-out. Pursuant to the Lease, during the first 30 months of the Lease following the commencement date, the monthly base rental payment will be approximately \$11,000. Thereafter, for the remaining term of the Lease, the facility is expanded by 10,660 square feet, creating a total 27,289 square foot facility, and the monthly base rental payment increases to approximately \$18,000. In addition to base rent, we will pay the annual real estate taxes and most operating expenses of the building. Following the commencement of the Lease, our separate lease for a nearby 7,477 square foot facility that we lease from an affiliate of Northwest Associates will become terminable upon 30 days notice by either us or the landlord.

The foregoing statement does not purport to be a complete statement of the parties' rights and obligations under either the Amendment or the Lease, or the transactions contemplated by either. The foregoing description is qualified in its entirety by reference to the Amendment, a copy of which is filed herewith as Exhibit 10.33, to previously filed documents pertaining to our 63 Second Avenue facility, which are Exhibits 10.1, 10.24., 10.27, and 10.28 to this Annual Report on Form 10-K, and the Lease, a copy of which is filed herewith as Exhibit 10.34, all of which are incorporated herein by reference.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information responsive to this item is incorporated by reference herein from the information to be contained in our 2010 definitive proxy statement (the “2010 Definitive Proxy Statement”) for the 2010 annual meeting of stockholders to be filed with the Securities and Exchange Commission within 120 days after the year ended December 31, 2009.

The information required by this item concerning compliance with Section 16(a) of the Exchange Act is incorporated herein by reference from the information contained in the 2010 Definitive Proxy Statement.

Code of Ethics

Certain documents relating to our corporate governance, including our Code of Business Conduct and Ethics, which is applicable to our directors, officers, and employees, and the charters of the Audit Committee, Compensation Committee, and Corporate Governance and Nominating Committee of our Board of Directors, are available on our website at <http://www.lemaitre.com>. We intend to disclose substantive amendments to or waivers (including implicit waivers) of any provision of the Code of Business Conduct and Ethics that apply to our principal executive officer, principal financial officer, principal accounting officer, or controller, or persons performing similar functions, by posting such information on our website available at <http://www.lemaitre.com>.

Item 11. Executive Compensation

The information responsive to this item is incorporated herein by reference from the information to be contained in the 2010 Definitive Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information responsive to this item is incorporated herein by reference from the information to be contained in the 2010 Definitive Proxy Statement.

Equity Compensation Plan Information

The following table sets forth information regarding our equity compensation plans in effect as of December 31, 2009. Each of our equity compensation plans is an “employee benefit plan” as defined by Rule 405 of Regulation C of the Securities Act of 1933.

<u>Plan category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u> (a)	<u>Weighted-average exercise price of outstanding options, warrants and rights</u> (b)	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</u> (c)
Equity compensation plans approved by security holders	2,270,143	\$ 4.73	221,513
Equity compensation plans not approved by security holders	—	—	—
Total	<u>2,270,143</u>	<u>\$ 4.73</u>	<u>221,513</u>

[Table of Contents](#)

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required responsive to this item is incorporated herein by reference from the information to be contained in the 2010 Definitive Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information responsive to this item is incorporated herein by reference from the information to be contained in the 2010 Definitive Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

a) Documents filed as part of this Report.

- (1) The following consolidated financial statements are filed herewith in Item 8 of Part II above.
 - (i) Report of Independent Registered Public Accounting Firm
 - (ii) Consolidated Balance Sheets
 - (iii) Consolidated Statements of Operations
 - (iv) Consolidated Statements of Changes in Stockholders' Equity and Comprehensive Income (Loss)
 - (v) Consolidated Statements of Cash Flows
 - (vi) Notes to Consolidated Financial Statements

(2) Financial Statement Schedules

Schedule II—Valuation and Qualifying Accounts. Such schedule should be read in conjunction with the consolidated financial statements. All other supplemental schedules are omitted because of the absence of conditions under which they are required.

(3) Exhibits

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
3.1	Amended and Restated By-laws of the Registrant	S-1/A	5/26/06	3.1	
3.2	Second Amended and Restated Certificate of Incorporation of the Registrant				X
4.1	Specimen Certificate evidencing shares of common stock	S-1/A	6/22/06	4.1	
10.1	Northwest Park Lease dated March 31, 2003, by and between the Registrant and Roger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, as amended	S-1	4/25/06	10.1	
10.2	Registration Rights Agreement dated June 17, 1998, by and between the Registrant and Housatonic Equity Investors, L.P.	S-1/A	5/26/06	10.2	
10.3	Patent Sublicense Agreement dated March 7, 2003, by and between IMPRA, Inc. and Endomed, Inc.	S-1	4/25/06	10.3	
10.4	Confirmation and Agreement dated February 2, 2005, by and between the Registrant and Bard Peripheral Vascular, Inc.	S-1	4/25/06	10.4	
10.5	License Agreement dated February 11, 1992, by and between United States Surgical Corporation and Spinnaker R&D Associates, as amended	S-1	4/25/06	10.5	
10.6	Side Letter Agreement dated January 30, 2004, by and between the Registrant and Spinnaker R&D Associates	S-1	4/25/06	10.6	
10.7	Executive Retention and Severance Agreement dated October 10, 2005, by and between the Registrant and George W. LeMaitre†	S-1/A	5/26/06	10.7	
10.8	Managing Director Employment Agreement dated October 1, 2008, by and between LeMaitre Vascular GmbH and Peter Gebauer, as amended†	10-K	3/31/09	10.8	

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
10.9	Employment Agreement dated June 20, 2006, by and between the Registrant and David Roberts†	S-1/A	6/22/06	10.24	
10.10	Employment Agreement dated April 20, 2006, by and between the Registrant and Joseph P. Pellegrino (corrected)†	S-1/A	6/22/06	10.10	
10.11	1997 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.11	
10.12	1998 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.12	
10.13	2000 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.13	
10.14	2004 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.14	
10.15	Amended and Restated 2006 Stock Option and Incentive Plan and form of agreements thereunder†	8-K	6/23/09	10.1	
10.16	Form of Indemnification Agreement between the Registrant and its directors and executive officers	S-1/A	5/26/06	10.17	
10.17	Guaranty of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated March 29, 2001, as amended	S-1/A	6/22/06	10.22	
10.18	Letter Agreement with Brown Brothers Harriman & Co. dated September 25, 2006	S-1/A	10/3/06	10.26	
10.19	Amendment to Guaranty of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated September 25, 2006	S-1/A	10/3/06	10.28	
10.20	Security Agreement of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated March 29, 2001, as Amended	S-1/A	10/3/06	10.29	
10.21	Letter Agreement with Brown Brothers Harriman & Co. dated August 23, 2008	10-K	3/31/09	10.29	
10.22	Form of Restricted Stock Unit Award Agreement under the Registrant's 2006 Stock Option and Incentive Plan†	8-K	12/26/06	99.1	
10.23	Management Incentive Compensation Plan†	8-K	4/27/07	10.1	
10.24	Second Amendment of Lease dated May 21, 2007, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	8-K	6/15/07	10.1	
10.25	Fourth Amended and Restated Revolving Loan and Security Agreement dated August 23, 2007, between the Registrant and Brown Brothers Harriman & Co.	8-K	8/29/07	10.1	
10.26	Third Amended and Restated Promissory Note (Secured) in favor of Brown Brothers Harriman & Co. dated August 23, 2007	8-K	8/29/07	10.2	
10.27	Third Amendment of Lease dated February 26, 2008, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	8-K	4/10/08	10.1	
10.28	Fourth Amendment of Lease dated October 31, 2008, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	10-K	3/31/09	10.36	

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
10.29	First Amendment to Executive Retention and Severance Agreement dated December 23, 2008, by and between the Registrant and George W. LeMaitre†	10-K	3/31/09	10.37	
10.30	First Amendment to Employment Agreement dated December 19, 2008, by and between the Registrant and David Roberts†	10-K	3/31/09	10.38	
10.31	First Amendment to Employment Agreement dated December 19, 2008, by and between the Registrant and Joseph P. Pellegrino†	10-K	3/31/09	10.39	
10.32	Letter Agreement with Brown Brothers Harriman & Co. dated September 14, 2009	8-K	9/18/09	10.1	
10.33	Fifth Amendment of Lease dated March 23, 2010, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant				X
10.34	Northwest Park Lease dated March 23, 2010, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant				X
21.1	List of Subsidiaries				X
23.1	Consent of Ernst & Young LLP				X
31.1	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				X
31.2	Certification of Chief Financial Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				X
32.1	Certification of Chief Executive Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 36 of Title 18 of the United States Code (18 U.S.C. §1350)**				X
32.2	Certification of Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 36 of Title 18 of the United States Code (18 U.S.C. §1350)**				X

† Indicates a management contract or any compensatory plan, contract, or arrangement.

** The certification attached as Exhibit 32.1 and 32.2 that accompanies this Annual Report on Form 10-K, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of LeMaitre Vascular, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on March 29, 2010.

LEMAITRE VASCULAR

By: /s/ GEORGE W. LEMAITRE
 George W. LeMaitre,
 Chief Executive Officer and Chairman of the Board

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u> /s/ GEORGE W. LEMAITRE </u> George W. LeMaitre	Chief Executive Officer and Chairman of the Board Principal Executive Officer	March 29, 2010
<u> /s/ JOSEPH P. PELLEGRINO, Jr. </u> Joseph P. Pellegrino, Jr.	Chief Financial Officer	March 29, 2010
<u> /s/ RUSSELL D. HAYS </u> Russell D. Hays	Director	March 29, 2010
<u> /s/ MICHAEL C. JACKSON </u> Michael C. Jackson	Director	March 29, 2010
<u> /s/ LAWRENCE J. JASINSKI </u> Lawrence J. Jasinski	Director	March 29, 2010
<u> /s/ CORNELIA W. LEMAITRE </u> Cornelia W. LeMaitre	Vice President, Human Resources and Director	March 29, 2010
<u> /s/ GEORGE D. LEMAITRE, M.D. </u> George D. LeMaitre, M.D.	Director	March 29, 2010
<u> /s/ JOHN J. O'CONNOR </u> John J. O'Connor	Director	March 29, 2010
<u> /s/ DAVID B. ROBERTS </u> David B. Roberts	President and Director	March 29, 2010
<u> /s/ WILLIAM N. THORNDIKE, Jr. </u> William N. Thorndike, Jr.	Director	March 29, 2010

INDEX TO FINANCIAL STATEMENTS

	<u>Page</u>
LeMaitre Vascular, Inc.	
<i>Consolidated Financial Statements</i>	
Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets as of December 31, 2009 and 2008	F-3
Consolidated Statements of Operations for the Years Ended December 31, 2009, 2008 and 2007	F-4
Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss) for the Years Ended December 31, 2009, 2008 and 2007	F-5
Consolidated Statements of Cash Flows for the Years Ended December 31, 2009, 2008 and 2007	F-8
Notes to Consolidated Financial Statements	F-9

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of LeMaitre Vascular, Inc.

We have audited the accompanying consolidated balance sheets of LeMaitre Vascular, Inc. as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the three years in the period ended December 31, 2009. Our audit also included the financial statement schedule listed at Item 15(a)2. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and 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. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits 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, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of LeMaitre Vascular, Inc. at December 31, 2009 and 2008, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Ernst & Young LLP

Boston, Massachusetts
March 29, 2010

LeMaitre Vascular, Inc.
Consolidated Balance Sheets

	December 31, 2009	December 31, 2008
	(in thousands, except share data)	
Assets		
Current assets:		
Cash and cash equivalents	\$ 23,192	\$ 15,895
Marketable securities	808	5,359
Accounts receivable, net of allowances of \$159 at December 31, 2009, and \$160 at December 31, 2008	7,778	7,244
Inventory	6,498	6,959
Prepaid expenses and other current assets	1,274	1,659
Total current assets	39,550	37,116
Property and equipment, net	2,101	2,327
Goodwill	11,022	11,022
Other intangibles, net	3,316	2,883
Other assets	917	1,051
Total assets	<u>\$ 56,906</u>	<u>\$ 54,399</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 1,136	\$ 606
Accrued expenses	5,412	5,543
Acquisition-related obligations	—	784
Total current liabilities	6,548	6,933
Long-term debt	188	78
Deferred tax liabilities	1,546	1,260
Other long-term liabilities	411	380
Total liabilities	8,693	8,651
Stockholders' equity:		
Preferred stock, \$0.01 par value; authorized 5,000,000 shares; none issued or outstanding	—	—
Common stock, \$0.01 par value; authorized 100,000,000 shares; issued 15,911,619 shares at December 31, 2009, and 15,703,522 shares at December 31, 2008	159	157
Additional paid-in capital	63,475	62,290
Accumulated deficit	(14,596)	(16,194)
Accumulated other comprehensive income (loss)	94	(272)
Treasury stock, at cost; 210,938 shares at December 31, 2009, and 50,284 shares at December 31, 2008	(919)	(233)
Total stockholders' equity	48,213	45,748
Total liabilities and stockholders' equity	<u>\$ 56,906</u>	<u>\$ 54,399</u>

See accompanying notes to consolidated financial statements.

[Table of Contents](#)

LeMaitre Vascular, Inc.
Consolidated Statements of Operations

	Year ended December 31,		
	2009	2008	2007
		(in thousands, except per share data)	
Net sales	\$ 50,908	\$ 48,720	\$ 41,446
Cost of sales	13,604	14,817	10,739
Gross profit	37,304	33,903	30,707
Sales and marketing	17,710	19,762	19,443
General and administrative	9,852	9,999	9,534
Research and development	5,910	5,328	4,591
Purchased research and development	—	—	373
Restructuring charges	1,777	1,147	1,042
Impairment charge	106	597	7
Total operating expenses	35,355	36,833	34,990
Income (loss) from operations	1,949	(2,930)	(4,283)
Other income (expense):			
Interest income	38	530	1,299
Interest expense	(26)	(61)	(1)
Investment impairment	—	(168)	—
Foreign currency gain (loss)	280	(139)	292
Other expense, net	(26)	(53)	(9)
Income (loss) before income taxes	2,215	(2,821)	(2,702)
Provision for income taxes	617	493	232
Net income (loss)	\$ 1,598	\$ (3,314)	\$ (2,934)
Net income (loss) available for common shareholders:			
Basic	\$ 0.10	\$ (0.21)	\$ (0.19)
Diluted	\$ 0.10	\$ (0.21)	\$ (0.19)
Weighted-average shares outstanding:			
Basic	15,687	15,572	15,398
Diluted	15,916	15,572	15,398

See accompanying notes to consolidated financial statements.

LeMaitre Vascular, Inc.
Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss)
(in thousands, except share data)

	<u>Common Stock</u>		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	<u>Treasury Stock</u>		Total Stockholders' Equity
	<u>Shares</u>	<u>Amount</u>				<u>Shares</u>	<u>Amount</u>	
Balance at December 31, 2006	15,322,526	\$ 153	\$ 60,504	\$ (9,946)	\$ 73	14,068	\$ (85)	\$ 50,699
Net loss				(2,934)				(2,934)
Unrealized gains on available for sale securities					94			94
Foreign currency translation adjustment					124			124
Comprehensive loss								(2,716)
Initial public offering costs				(121)				(121)
Issuance of common stock for stock options exercised	140,020	2	171					173
Issuance of common stock for employee stock plan purchases	13,357		72					72
Vested restricted stock units	40,509							—
Stock based compensation expense			561					561
Repurchase of common stock at cost						12,784	(82)	(82)
Balance at December 31, 2007	<u>15,516,412</u>	<u>\$ 155</u>	<u>\$ 61,187</u>	<u>\$ (12,880)</u>	<u>\$ 291</u>	<u>26,852</u>	<u>\$ (167)</u>	<u>\$ 48,586</u>

See accompanying notes to consolidated financial statements.

LeMaitre Vascular, Inc.
Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss)—(continued)
(in thousands, except share data)

	<u>common stock</u>		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	<u>Treasury Stock</u>		Total Stockholders' Equity
	<u>Shares</u>	<u>Amount</u>				<u>Shares</u>	<u>Amount</u>	
Balance at December 31, 2007	15,516,412	\$ 155	\$61,187	\$ (12,880)	\$ 291	26,852	\$(167)	\$48,586
Net Loss				(3,314)				(3,314)
Unrealized loss on available for sale securities					(190)			(190)
Foreign currency translation adjustment					(373)			(373)
Comprehensive loss								(3,877)
Issuance of common stock for stock options exercised	99,640	1	204					205
Issuance of common stock for employee stock plan purchases	22,047		98					98
Vested restricted stock units	65,423	1						1
Stock based compensation expense			801					801
Repurchase of common stock at cost						23,432	(66)	(66)
Balance at December 31, 2008	<u>15,703,522</u>	<u>\$ 157</u>	<u>\$62,290</u>	<u>\$(16,194)</u>	<u>\$ (272)</u>	<u>50,284</u>	<u>\$(233)</u>	<u>\$ 45,748</u>

See accompanying notes to consolidated financial statements.

LeMaitre Vascular, Inc.
Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss)—(continued)
(in thousands, except share data)

	<u>common stock</u>		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	<u>Treasury Stock</u>		Total Stockholders' Equity
	Shares	Amount				Shares	Amount	
Balance at December 31, 2008	15,703,522	\$ 157	\$62,290	(\$16,194)	(\$ 272)	50,284	(\$ 233)	\$ 45,748
Net income				1,598				1,598
Unrealized gain on available for sale securities					95			95
Foreign currency translation adjustment					271			271
Comprehensive income								1,964
Issuance of common stock for stock options exercised	51,250	1	156					157
Issuance of common stock for employee stock plan purchases	18,378		44					44
Vested restricted stock units	138,469	1						1
Stock based compensation expense			985					985
Repurchase of common stock at cost						160,654	(686)	(686)
Balance at December 31, 2009	<u>15,911,619</u>	<u>\$ 159</u>	<u>\$63,475</u>	<u>(\$14,596)</u>	<u>\$ 94</u>	<u>210,938</u>	<u>(\$ 919)</u>	<u>\$ 48,213</u>

See accompanying notes to consolidated financial statements.

LeMaitre Vascular, Inc.
Consolidated Statements of Cash Flows

	Year ended December 31,		
	2009	2008 (in thousands)	2007
Operating activities			
Net income (loss)	\$ 1,598	\$ (3,314)	\$ (2,934)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	1,419	1,593	1,394
Stock-based compensation	985	801	561
Accretion of discount (amortization of premium) on marketable securities	46	(99)	(223)
Investment impairment charges	—	168	—
Impairment charges	106	597	7
Provision for losses in accounts receivable	75	27	197
Provision for inventory write-downs	428	1,048	503
Provision for deferred income taxes	224	249	639
Loss on disposal of property and equipment	17	41	6
(Gain) loss on sales of marketable securities	34	(5)	3
Foreign currency transaction gain (loss)	63	25	(8)
Changes in operating assets and liabilities, net of effect of business acquisitions:			
Accounts receivable	(486)	(353)	(1,679)
Inventory	164	1,473	(1,800)
Prepaid expenses and other assets	610	1,050	(920)
Accounts payable and other liabilities	157	(2,720)	2,134
Net cash provided by (used in) operating activities	5,440	581	(2,120)
Investing activities			
Purchase of property and equipment	(577)	(624)	(1,120)
Payments related to acquisitions	(759)	(835)	(5,109)
Proceeds from sale of property and equipment	—	—	6
Purchase of technology and licenses	(1,048)	(114)	(273)
Sales and maturities of marketable securities	4,566	14,909	9,402
Purchase of marketable securities	—	(4,323)	(12,094)
Net cash provided by (used in) investing activities	2,182	9,013	(9,188)
Financing activities			
Proceeds from issuance of common stock	202	304	245
Proceeds from Italian government loan	108	—	—
Repayment of revolving line of credit	—	(262)	—
Principal payments on capital lease obligations	—	—	(32)
Expenses associated with equity transactions	—	—	(121)
Purchase of treasury stock	(686)	(66)	(82)
Net cash provided by (used in) financing activities	(376)	(24)	10
Effect of exchange rate changes on cash and cash equivalents	51	(72)	69
Net increase (decrease) in cash and cash equivalents	7,297	9,498	(11,229)
Cash and cash equivalents at beginning of year	15,895	6,397	17,626
Cash and cash equivalents at end of year	<u>\$ 23,192</u>	<u>\$ 15,895</u>	<u>\$ 6,397</u>
Supplemental disclosures of cash flow information (see Note 15).			

See accompanying notes to consolidated financial statements.

LeMaitre Vascular, Inc.
Notes to Consolidated Financial Statements
December 31, 2009

1. Significant Accounting Policies and Related Matters

Description of Business

Unless the context requires otherwise, references to LeMaitre Vascular, we, our, and us refer to LeMaitre Vascular, Inc. LeMaitre Vascular develops, manufactures, and markets medical devices and implants used primarily in the field of vascular surgery. We operate in a single segment in which our principal product lines are thoracic stent grafts, abdominal stent grafts, anastomotic clips, radiopaque tape, valvulotomes, carotid shunts, arterial prostheses, remote endarterectomy devices, covered stents, contrast injectors, balloon catheters, vascular grafts, vein strippers, cholangiogram catheters and vascular access ports. We also distribute in 12 European countries an abdominal stent graft manufactured by a third party. In addition, we distribute in the United States and European Union a biological vascular patch manufactured by a third party. Our offices are located in Burlington, Massachusetts, Sulzbach, Germany, Rome, Italy, Brindisi, Italy, and Tokyo, Japan.

Consolidation and Basis of Presentation

Our consolidated financial statements include the accounts of LeMaitre Vascular and the accounts of our wholly-owned subsidiaries, LeMaitre Vascular GmbH, LeMaitre Vascular GK (successor to LeMaitre Vascular KK, reorganized in June 2007), LeMaitre UK Acquisition LLC, Vascutech Acquisition LLC, LeMaitre Acquisition LLC, LeMaitre Vascular SAS (organized in 2007), Biomateriali S.r.l. (acquired in 2007), and LeMaitre Vascular S.r.l. (organized in 2007). All significant intercompany accounts and transactions have been eliminated in consolidation.

Certain prior year amounts have been reclassified in the consolidated financial statements and accompanying notes to conform to the current year presentation.

Foreign Currency Translation

Balance sheet accounts of foreign subsidiaries are translated into U.S. dollars at year-end exchange rates. Operating accounts are translated at average exchange rates for each year. Net translation gains or losses are adjusted directly to a separate component of other comprehensive income (loss) within stockholders' equity.

Foreign exchange transaction gains (losses), substantially all of which relate to intercompany activity between us and our foreign subsidiaries, amounted to \$0.3 million in 2009, (\$0.1 million) in 2008, and \$0.3 million in 2007 and are included in other income (expense) in the accompanying consolidated statements of operations.

Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires us to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes. Our estimates and assumptions, including those related to bad debts, inventories, intangible assets, sales returns and discounts, and income taxes are reviewed on an ongoing basis and updated as appropriate. Actual results could differ from those estimates.

Revenue Recognition

Our revenue is derived primarily from the sale of disposable or implantable devices used during vascular surgery. We sell directly to hospitals and to distributors, as described below, and, during the periods presented in our consolidated financial statements, entered into consigned inventory arrangements with either hospitals or distributors on a limited basis.

[Table of Contents](#)

We recognize revenue when four basic criteria are met: (1) Persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. We assess whether the fee is fixed or determinable based on the terms of the agreement associated with the transaction. Substantially all sales transactions are based on prices that are determinable at the time the customer's purchase order is accepted by us. Orders that are not accompanied with a purchase order are either confirmed in writing or verbally with the customer.

After the delivery of the product, there is no uncertainty about customer acceptance due to the nature of the product. There is no contingency for acceptance, warranty, or price protection. We do not recognize revenue on consigned sales until the customer notifies us that the products have been used. In order to determine whether collection is probable, we assess a number of factors, including past transaction history with the customer and the creditworthiness of the customer. If we determine that collection is not reasonably assured, we defer the recognition of revenue until collection becomes reasonably assured, which is generally upon receipt of payment. We provide for product returns at the time revenue is recognized based on our historical product return history.

Based on these policies, we recognize revenue, net of allowances for returns and discounts, as products are shipped, based on shipping point terms, at which time title passes to customers. Customers returning products are entitled to full or partial credit based on the condition and timing of the return. To be accepted, a returned product must be unopened (if sterile), unadulterated, and undamaged, and must have at least 18 months remaining prior to its expiration date, or 12 months for our hospital customers in Europe. These return policies apply to sales to both hospitals and distributors. Our products are subject to a limited warranty that our products have been manufactured with due care. The amount of products returned to us, either for exchange or credit, has not been material. Nevertheless, we provide for an allowance for future sales returns based on historical return experience. Our cost of replacing defective products has not been material and is accounted for at the time of replacement.

Research and Development Expense

Research and development costs, principally salaries and supplies, are expensed as incurred.

Shipping and Handling Costs

Shipping and handling fees paid by customers are recorded as sales, with the related expense recorded in cost of sales.

Advertising Costs

Advertising costs are expensed as incurred and are included as a component of sales and marketing expense in the accompanying Consolidated Statements of Operations. Advertising costs amounted to \$0.4 million in 2009, \$0.6 million in 2008, and \$0.6 million in 2007.

Cash and Cash Equivalents

We consider all highly liquid instruments purchased with maturity dates of 90 days or less to be cash equivalents. Cash and cash equivalents are primarily invested in fully collateralized overnight repurchase agreements. These amounts are stated at cost, which approximates fair value.

Marketable Securities

Our investments consist primarily of marketable debt securities and U.S. government securities, which are classified as available-for-sale and are carried at fair market value at December 31, 2009 and December 31, 2008. The unrealized gains (losses) on available-for-sale securities are recorded in accumulated other comprehensive income (loss). We consider all highly liquid investments with maturities of 90 days or less at the time of purchase

[Table of Contents](#)

to be cash equivalents, and investments with maturities of greater than 90 days at the time of purchase to be marketable securities. When a marketable security incurs a significant unrealized loss for a sustained period of time, we review the instrument to determine if it is other-than-temporarily impaired. If we conclude an instrument is other-than-temporarily impaired, we record the unrealized loss in the consolidated statement of operations.

Concentrations of Credit Risk

Our financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents, marketable securities, and accounts receivable. Cash equivalents represent highly liquid investments with maturities of 90 days or less at the date of purchase. Marketable securities are investment grade, interest-earning securities and are diversified by type and industry. Credit risk related to cash, cash equivalents, and marketable securities are limited based on the creditworthiness of the financial institutions at which these funds are held.

Our accounts receivable are with customers based in the United States and internationally. Accounts receivable generally are due within 30 to 90 days of invoice and are stated at amounts due from customers, net of an allowance for doubtful accounts and sales returns, other than in certain European markets where longer payment terms are customary. We perform ongoing credit evaluations of the financial condition of our customers and adjust credit limits based upon payment history and the current creditworthiness of the customers, as determined by a review of their current credit information. We continuously monitor aging reports, collections, and payments from customers, and maintain a provision for estimated credit losses based upon historical experience and any specific customer collection issues we identify.

We write off accounts receivable when they become uncollectible. While such credit losses have historically been within our expectations and allowances, we cannot guarantee the same credit loss rates will be experienced in the future. The allowance for doubtful accounts is our best estimate of the amount of probable credit losses in our existing accounts receivable. We review our allowance for doubtful accounts on a monthly basis and all past due balances are reviewed individually for collectability. The provision for the allowance for doubtful accounts is recorded in general and administrative expenses.

Fair Value of Financial Instruments

Our financial instruments include cash and cash equivalents, marketable securities, accounts receivable, trade payables, and notes payable. The fair value of the majority of these instruments approximates their carrying value based upon their short-term nature or variable rates of interest. The deferred payments associated with the Biomateriali S.r.l. acquisition were recorded at the present value using our incremental borrowing rate in the consolidated balance sheet for the year ended December 31, 2008. The difference between the present value and the amount due was amortized using the effective interest method over the period that each of liabilities is outstanding. The amortization was recorded as interest expense.

Inventory

Inventory consists of finished products, work-in-process, and raw materials. We value inventory at the lower of cost or market value. Cost includes materials, labor, and manufacturing overhead and is determined using the first-in, first-out (FIFO) method. On a quarterly basis, we review inventory quantities on hand and analyze the provision for excess and obsolete inventory based primarily on product expiration dating and our estimated sales forecast, which is based on sales history and anticipated future demand. Our estimates of future product demand may not be accurate, and we may understate or overstate the provision required for excess and obsolete inventory. Accordingly, any significant unanticipated changes in demand could have a significant impact on the value of our inventory and results of operations.

[Table of Contents](#)

Property and Equipment

Property and equipment are recorded at cost. Depreciation is provided over the estimated useful lives of the related assets using straight-line method as follows:

<u>Description</u>	<u>Useful Life</u>
Computers and equipment	3–5 years
Machinery and equipment	3–10 years
Leasehold improvements	The shorter of its useful life or lease term

Expenditures for maintenance and repairs are charged to operations when incurred, while additions and betterments are capitalized. When assets are retired or disposed, the asset's original cost and related accumulated depreciation are eliminated from the accounts and any gain or loss is reflected in the statement of operations.

Valuation of Business Combinations

We record intangible assets acquired in business combinations under the purchase method of accounting by allocating the amounts paid for each acquisition to the assets acquired and liabilities assumed based on their fair values at the dates of the acquisition. The purchase price in excess of net tangible assets acquired is allocated to the identifiable intangible assets based on their fair value. The fair value of identifiable intangible assets is usually based upon detailed valuations performed by independent appraisers that use information and assumptions provided by management. We allocate any excess purchase price over the fair value of the net tangible and intangible assets acquired to goodwill.

Contingent Consideration

Certain of our business combinations from 2007 and 2008 involve the payment of contingent consideration. We establish a contingent consideration liability at the acquisition date when the initial purchase price before including any contingent consideration is less than the sum of the fair value assigned to the assets acquired and the liabilities assumed (the excess). The liability established equals the lesser of the maximum amount of the potential contingent consideration or the excess. When the contingencies are resolved, any excess of the fair value of the contingent payments over the amount that was recognized as if it were a liability shall be recognized as an additional cost of the related acquisition (see Note 3). If the amount initially recognized as if it were a liability exceeds the fair value of the contingent payments made, the excess shall be allocated as a pro rata reduction of the amounts initially assigned to the identifiable intangible assets acquired.

For business combinations completed after January 1, 2009, the FASB requires contingent consideration be recognized at the date of acquisition, based on the fair value at that date, and then re-measured periodically through adjustments to net income.

Impairment of Long-lived Assets

We review the carrying value of our long-lived assets (primarily property and equipment and intangible assets) to assess the recoverability of these assets when indicators of impairment occur. We record impairment losses on long-lived assets used in operations when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amount of those assets. Impairment is measured based on the fair market value of the affected asset using discounted cash flows.

In January 2008 we were notified by one of the customers of our Biomaterials subsidiary that they would no longer purchase a certain product line from us, and, as a result, we recorded an impairment charge of \$0.4 million due to the write-down of related intangible assets. As of December 31, 2008, we determined that an impairment

[Table of Contents](#)

indicator existed with respect to the remaining product line with this Biomaterials customer. Consequently, we recorded an impairment charge of \$84,000 to reduce the carrying value of these assets to their estimated fair value of \$0.1 million. Fair value was determined by projected future cash flows discounted to their net present value.

In 2008, we also recognized impairment charges of \$78,000 related to patents and trademarks which were deemed to have no value based upon a lack of future expected economic benefits. In March 2009 we determined that certain patents within our endovascular product category portfolio in the United States and Europe had no value based upon an analysis of expected economic benefits. As a result, we recorded an impairment charge of \$0.1 million for the write-down of these patents. In 2009, we also recognized impairment charges of \$30,000 related to patents and trademarks which were deemed to have no value based upon a lack of future expected economic benefits.

Goodwill

Goodwill represents the amount of consideration paid in connection with business acquisitions in excess of the fair value of assets acquired and liabilities assumed. Goodwill is evaluated for impairment annually or more frequently if indicators of impairment are present or changes in circumstances suggest that impairment may exist. We evaluate the December 31 balance of the carrying value of goodwill based on a single reporting unit annually. The first step of our goodwill impairment test, used to identify potential impairment, compares the fair value of our reporting unit with its carrying amount, including goodwill. If the fair value of our reporting unit exceeds its carrying amount, the goodwill of the reporting unit is considered not impaired, and the second step of the impairment test, used to measure the amount of the impairment loss, is unnecessary. If the carrying amount of our reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test, used to measure the amount of impairment loss, compares the implied fair value of the reporting unit goodwill as of the date of the impairment review with the carrying amount of that goodwill. The implied fair value of goodwill is determined on the same basis as the amount of goodwill recognized in connection with a business combination. Specifically, the fair value of a reporting unit is allocated to all of the assets and liabilities (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination as of the date of the impairment review and as if the fair value of the reporting unit was the price paid to acquire the reporting unit. The excess of the fair value of a reporting unit over the amounts assigned to its assets and liabilities is the implied fair value of goodwill. If the carrying amount of the reporting unit goodwill exceeds the implied fair value of that goodwill, an impairment loss shall be recognized in an amount equal to that excess. We have determined that no goodwill impairment charges were required for the years ended December 31, 2009, 2008, or 2007.

Other Intangible Assets

Other intangible assets consist primarily of patents, trademarks, technology licenses, and customer relationships acquired in connection with business acquisitions and are amortized over their estimated useful lives, ranging from 2 to 17 years.

Stock-based Compensation

We recognize, as expense, the estimated fair value of all share-based payments to employees which is determined using the Black-Scholes option pricing model. We have elected to recognize the compensation cost of all share-based awards on a straight-line basis over the vesting period of the award. In periods that we grant stock options, fair value assumptions are based on volatility, interest, dividend yield, and expected term over which the stock options will be outstanding. The computation of expected volatility is based on the historical volatility of the company's stock. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury risk-free interest rate in effect at the time of grant. The expected lives of the options were

[Table of Contents](#)

estimated using the simplified method for “plan vanilla” options. Computation of expected forfeitures is based on historical forfeiture rates of our stock options. We used an expected forfeiture rate of approximately 18%, 20%, and 20% for 2009, 2008 and 2007, respectively. Share-based compensation charges are recorded net of the estimated forfeitures and will be adjusted in future periods to reflect the results of actual forfeitures and vesting.

The components of share-based compensation expense included in net loss are as follows:

	<u>2009</u>	<u>2008</u> (in thousands)	<u>2007</u>
Stock option awards to employees	\$ 300	\$ 310	\$ 241
Restricted common stock awards	685	499	303
Employee stock purchase plan	—	—	8
Stock option awards to non-employees	—	(8)	9
Total stock-based compensation	<u>\$985</u>	<u>\$ 801</u>	<u>\$561</u>

We expect to record the unamortized portion of share-based compensation expense of \$1.9 million for existing stock options and restricted stock units (RSUs) outstanding at December 31, 2009, over a weighted-average period of 3.5 years.

Commitments and Contingencies

In the normal course of business, we are subject to proceedings, lawsuits, and other claims and assessments for matters related to, among other things, patent infringement, business acquisitions, employment, and product recalls. We assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required, if any, for these contingencies is made after careful analysis of each individual issue. The required reserves may change in the future due to new developments in each matter or changes in approach such as a change in settlement strategy in dealing with these matters. We record charges for the costs we anticipate incurring in connection with litigation and claims against us when we conclude a loss is probable and we can reasonably estimate these costs. During the years ended December 31, 2009, 2008, and 2007, we were not subject to any material litigation or claims and assessments.

Income Taxes

We account for income taxes under the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred taxes are determined based on the difference between the financial reporting and tax bases of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. The provision for income taxes includes taxes currently payable and deferred taxes resulting from the tax effects of temporary differences between the financial statement and tax bases of assets and liabilities. We maintain valuation allowances where it is more likely than not that all or a portion of a deferred tax asset will not be realized. Changes in the valuation allowances are included in our tax provision in the period of change. In determining whether a valuation allowance is warranted, we evaluate factors such as prior earnings history, expected future earnings, carry-back and carry-forward periods and tax strategies that could potentially enhance the likelihood of the realization of a deferred tax asset.

We recognize, measure, present and disclose in our financial statements, uncertain tax positions that we have taken or expect to take on a tax return. We recognize in our financial statements the impact of tax positions that meet a “more likely than not” threshold, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement.

Our policy is to classify interest and penalties related to unrecognized tax benefits as income tax expense, which is consistent with that of prior years.

[Table of Contents](#)

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Other than reported net income (loss), comprehensive income (loss) includes foreign currency translation adjustments and unrealized gains and losses on available-for-sale marketable securities, which are disclosed in the accompanying consolidated statements of stockholders' equity and comprehensive income (loss).

As of December 31, 2009, accumulated other comprehensive loss consisted of unrealized gains on available-for-sale securities of \$4,000 and foreign currency translation adjustment gains of \$90,000. As of December 31, 2008, accumulated other comprehensive loss consisted of unrealized losses on available-for-sale securities of \$91,000 and foreign currency translation adjustment losses of \$181,000.

Restructuring

We record restructuring charges incurred in connection with consolidation or relocation of operations, exited business lines, shutdowns of specific sites, or distributor terminations. These restructuring charges, which reflect our commitment to a termination or exit plan that will begin within 12 months, are based on estimates of the expected costs associated with site closure, legal matters, contract terminations, employee separation arrangements, or other costs directly related to the restructuring. If the actual cost incurred exceeds the estimated cost, an additional charge to earnings will result. If the actual cost is less than the estimated cost, a credit to earnings will be recognized.

Net Income (Loss) Per Share

We compute basic earnings per share by dividing net income available for common stockholders by the weighted average number of shares outstanding during the year. Except where the result would be anti-dilutive to income from continuing operations, diluted earnings per share has been computed using the treasury stock method for the vesting of restricted common stock and the exercise of stock options, as well as their related income tax effects.

The computation of basic and diluted net income (loss) per share is as follows:

	Year ended December 31,		
	2009	2008	2007
	(in thousands, except per share data)		
Basic:			
Net income (loss) available for common stockholders	\$ 1,598	\$ (3,314)	\$ (2,934)
Weighted average shares outstanding	15,687	15,572	15,398
Basic net income (loss) per share	\$ 0.10	\$ (0.21)	\$ (0.19)
Diluted:			
Net income (loss) available for common stockholders	\$ 1,598	\$ (3,314)	\$ (2,934)
Weighted-average shares outstanding	15,687	15,572	15,398
Common stock equivalents, if dilutive	229	—	—
Shares used in computing diluted net income (loss) per common share	15,916	15,572	15,398
Diluted net income (loss) per share	\$ 0.10	\$ (0.21)	\$ (0.19)

[Table of Contents](#)

For 2009 shares used in computing diluted net income per common share excludes 303,958 weighted-average shares of common stock issuable upon exercise of outstanding stock options and vesting of RSUs, as the effect of including those shares would be anti-dilutive.

For 2008 shares used in computing diluted net loss per common share excludes 394,257 weighted-average shares of common stock issuable upon exercise of outstanding stock options and vesting of RSUs, as the effect of including those shares would be anti-dilutive. An additional 232,845 of common stock equivalents were excluded as a result of our net loss for the period.

For 2007 shares used in computing diluted net loss per common share excludes 737,053 weighted-average shares of common stock issuable upon exercise of outstanding stock options and vesting of RSUs, as the effect of including those shares would be anti-dilutive. An additional 451,864 of common stock equivalents were excluded as a result of our net loss for the period.

Recent Accounting Pronouncements

In December 2007 the Financial Accounting Standards Board (the FASB) revised the accounting rules concerning business combinations. This revised guidance requires the acquiring entity in a business combination to recognize the full fair value of assets acquired and liabilities assumed in the transaction; requires certain contingent assets and liabilities acquired to be recognized at their fair values on the acquisition date; requires contingent consideration to be recognized at its fair value on the acquisition date and changes in the fair value to be recognized in earnings until settled; requires the expensing of most transaction and restructuring costs; and generally requires the reversals of valuation allowances related to acquired deferred tax assets and changes to acquired income tax uncertainties to also be recognized in earnings. The revised guidance was effective for business combination transactions consummated after December 31, 2008. There was no impact upon adoption; however, the rule changes may materially affect the accounting for any future business combinations.

In December 2007, the FASB issued new rules on noncontrolling interests in consolidated financial statements. The noncontrolling interest guidance changed the accounting for minority interests, which are reclassified as noncontrolling interests and classified as a component of equity. We adopted this guidance effective January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In February 2008, the FASB delayed the effective date of the fair value accounting standard for all nonfinancial assets and nonfinancial liabilities, except for those that are recognized or disclosed at fair value in the financial statements on a recurring basis. The Company adopted the provisions of the standard for nonfinancial assets and nonfinancial liabilities as of January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In March 2008, the FASB issued a pronouncement pertaining to disclosures about derivative instruments and hedging activities. This guidance requires disclosures of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. We adopted this guidance effective January 1, 2009. The adoption did not have an effect on our consolidated results of operations or financial condition.

In April 2008 the FASB provided guidance for determining the useful life of recognized intangible assets and to improve consistency between the period of expected cash flows used to measure the fair value of a recognized intangible asset and the useful life of the intangible asset. We adopted this guidance effective January 1, 2009 and will apply its provisions prospectively to recognized intangible assets acquired after that date. The adoption did not have an effect on our consolidated results of operations or financial condition.

[Table of Contents](#)

In April 2009, the FASB issued guidance on the recognition and presentation of other-than-temporary impairments. This guidance amends the prior other-than-temporary impairment guidance for certain debt securities and will require the investor to assess the likelihood of selling the debt security prior to recovery of its cost basis. If an investor is able to meet the criteria to assert that it does not intend to sell the debt security and more likely than not will not be required to sell the debt security before its anticipated recovery, impairment charges related to credit losses would be recognized in earnings whereas impairment charges related to non-credit losses would be reflected in other comprehensive income. We elected early adoption of this rule in the first quarter of 2009. The adoption of the new other-than-temporary guidance had no impact on our consolidated results of operations or financial condition.

In May 2009, the FASB issued a pronouncement on subsequent event accounting that establishes the period after the balance sheet date during which management shall evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements; the circumstances under which an entity shall recognize events or transactions occurring after the balance sheet date in its financial statements; and the disclosures that an entity shall make about events or transactions that occurred after the balance sheet date. We adopted the pronouncement for our second quarter 2009, and there was no effect from adoption.

In June 2009, the FASB issued guidance on the FASB Accounting Standards Codification and hierarchy of generally accepted accounting principles. The FASB Accounting Standards Codification (the Codification), is the single source of authoritative nongovernmental generally accepted accounting principles in the U. S. GAAP. The Codification is effective for interim and annual periods ending after September 15, 2009. The adoption of the Codification had no impact on our consolidated results of operations or financial condition.

In September 2009, the Emerging Issues Task Force issued the new rules pertaining to the accounting for revenue arrangements with multiple deliverables. The new rules provide an alternative method for establishing fair value of a deliverable when vendor specific objective evidence cannot be determined. The guidance provides for the determination of the best estimate of selling price to separate deliverables and allows the allocation of arrangement consideration using this relative selling price model. The guidance supersedes the prior multiple element revenue arrangement accounting rules that we previously used. The new guidance is effective for fiscal years beginning on or after June 15, 2010 and can be early or retrospectively adopted. We have elected to adopt the new revenue recognition guidance retrospectively as of January 1, 2009. The adoption of the new revenue recognition guidance had no impact on our consolidated results of operations or financial condition as we generally do not enter into multiple element revenue arrangements.

2. Marketable Securities

Marketable securities are primarily available-for-sale investments and consist of the following:

	As of December 31, 2009				As of December 31, 2008			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(in thousands)							
U.S. treasury obligations	\$ —	\$ —	\$ —	\$ —	\$ 1,669	\$ —	\$ —	\$ 1,669
Federal agency obligations	—	—	—	—	999	1	—	1,000
Corporate bonds	450	—	—	450	1,126	—	(59)	1,067
Asset backed securities	354	4	—	358	1,656	—	(33)	1,623
Total marketable securities	\$ 804	\$ 4	\$ —	\$ 808	\$ 5,450	\$ 1	\$ (92)	\$ 5,359

Gross realized gains and losses on the sales of available-for-sale marketable securities were not material and have been included in interest income in the consolidated statements of operations for 2009, 2008, and 2007.

[Table of Contents](#)

In 2008, we recorded an investment impairment charge of \$0.2 million which was attributed to the other-than-temporary decline in one asset backed security which we held as available-for-sale in our marketable securities portfolio at December 31, 2008.

The amortized cost and estimated fair value of available-for-sale marketable securities as of December 31, 2009, by contractual maturity, were as follows:

	2009	
	Amortized Cost	Fair Value
(in thousands)		
Contractual maturities:		
Due in 1 year or less	\$ 557	\$ 557
Due in 1–2 years	247	251
Total	<u>\$ 804</u>	<u>\$ 808</u>

3. Acquisitions

Biomateriali

In December 2007 we acquired all of the stock of Biomateriali, S.r.l. (Biomateriali) a privately held Italian company. Biomateriali manufactures polyester grafts for use in open abdominal aortic aneurysm and peripheral vascular procedures, which we branded the AlboGraft Vascular Graft. Our consolidated financial statements include the operating results for Biomateriali from the date of the acquisition.

The aggregate purchase price was \$3.4 million in cash and included: a \$1.9 million cash payment on the date of the acquisition; \$1.1 million deferred payment for the assumption of outstanding debt to their shareholders and their officers, of which \$0.5 million was paid in 2008 and \$0.6 million was paid in 2009; \$0.2 million of direct acquisition costs; and \$0.2 million for a deferred purchase price payment which was paid in 2009. The deferred payments have been included in Acquisition-related obligations in the December 31, 2008 balance sheet.

The following table summarizes the final purchase accounting for the fair value of the assets acquired and liabilities assumed at the date of the acquisition:

	Allocated Fair Value (in thousands)
Current assets	\$ 2,205
Property, plant, and equipment	456
Intangible assets	1,238
Other assets	1,186
Goodwill	100
Total assets acquired	5,185
Current liabilities	(1,417)
Other liabilities	(388)
Total liabilities assumed	<u>(1,805)</u>
	<u>\$ 3,380</u>

[Table of Contents](#)

Of the \$1.2 million of acquired intangible assets, the following table reflects the allocation of the acquired intangible assets and related estimated useful lives:

	<u>Allocated Fair Value</u> (in thousands)	<u>Weighted Average Useful Life</u>
Customer and contract relationships	\$ 622	7.5 years
Patents	283	9.5 years
Trade names	283	9.5 years
Non-compete agreement	50	4.0 years
Total intangible assets	<u>\$ 1,238</u>	

Based on developments since the date of acquisition, we recorded impairment charges of \$0.5 million on the Biomateriali intangible assets in 2008 as discussed in Note 1.

AlboGraft Distribution Agreement

In March 2009, we entered into a series of agreements with Edwards Lifesciences AG (“Edwards”) to terminate their distribution of our AlboGraft Vascular Graft product line in Europe and certain other international markets, for which they had exclusive rights through 2011, and to acquire certain assets and rights from Edwards. We paid \$3.5 million to Edwards in exchange for this early termination, the purchase of their AlboGraft customer list, certain licenses and most of their remaining AlboGraft inventory. We allocated the payment to the tangible and intangible assets acquired, and to the settlement of our pre-existing relationship with Edwards, based on the estimated fair value of each of these elements to the transaction. As such, we recorded \$1.0 million of intangible assets, recognized a \$1.8 million restructuring charge related to the early termination of the distribution agreement, and \$0.7 million of inventory.

Vascular Architects

In September 2007 we acquired substantially all of the assets of Vascular Architects (VA), a privately held medical device company. VA marketed and sold devices for remote endarterectomy, a hybrid open/endovascular medical procedure. The aggregate purchase price was \$2.9 million in cash and assumed liabilities. Under the terms of the purchase agreement, we acquired certain customer contracts, patents, and other intellectual property, in exchange for the assumption of certain liabilities. Approximately \$2.5 million was paid upon the execution of the purchase agreement and \$0.3 million was paid on the first anniversary of the signing in September 2008.

The following table summarizes final purchase accounting for the fair value of the assets acquired and liabilities assumed at the date of the acquisition:

	<u>Allocated Fair Value</u> (in thousands)
Current assets	\$ 543
Property, plant, and equipment	3
Intangible assets	658
Goodwill	1,758
Total assets acquired	<u>2,962</u>
Total current liabilities assumed	<u>(72)</u>
	<u>\$ 2,890</u>

[Table of Contents](#)

Of the \$0.7 million of acquired intangible assets, the following table reflects the allocation of the acquired intangible assets and related estimate useful lives:

	Allocated Fair Value (in thousands)	Weighted Average Useful Life
Customer relationships	\$ 375	7.5 years
Patents	141	8.0 years
Trade names	34	8.0 years
Non-complete agreement	108	5.0 years
Total intangible assets	<u>\$ 658</u>	

Acquisitions of Technology

In December 2007 we purchased certain patents and in-process research and development, and entered into a non-compete agreement with Arizona Heart Innovative Technologies, LLC. Total consideration paid included \$0.5 million in cash at the acquisition date and certain earn-out payments associated with the receipts of approvals to commercialize the device in the European Union and the United States. Additionally, we are obligated to pay a milestone payment of \$100,000 upon the issuance of any U.S. patent that matures from any of the applications acquired in the transaction. The fair value of the acquired in-process research and development of \$373,000 was expensed on the date of acquisition, as it had not yet reached technological feasibility and had no alternative future use at the date of acquisition. The fair value of this acquired in-process research and development is reported as purchased research and development in our 2007 consolidated statement of operations. The purchase price was allocated to the identifiable intangible assets based on their fair values at the date of the acquisition as determined by a valuation from an independent appraiser. We considered the \$100,000 milestone payment and earn-out payments associated with the receipts of approvals to commercialize the products in Europe and the United States to be contingent consideration that will be recorded as additional intangible assets in the period that the contingency is resolved.

In November 2007 we also acquired patents and patent applications in process for a total purchase price of \$62,500, and these have been capitalized as patents. We are contractually obligated to make royalty payments on any sales from the technology purchased. In 2009, we determined that we had failed to meet two product development milestones relating to this agreement, and subsequently determined that the patents had no value based upon an analysis of expected economic benefits. As a result, we recorded \$0.1 million charge associated with the missed milestones, which we paid in December 2009, and we recorded an impairment charge of \$0.1 million for the write-down of these patents. In November 2009, we amended the agreement to license additional intellectual property in consideration for a revised royalty payment on any future products brought to market under the protection of the licensed intellectual property.

4. Inventory

Inventory consists of the following:

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
	(in thousands)	
Raw materials	\$ 1,624	\$ 1,982
Work-in-process	1,244	975
Finished products	3,630	4,002
Total inventory	<u>\$6,498</u>	<u>\$6,959</u>

[Table of Contents](#)

5. Property and Equipment

Property and equipment consists of the following:

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
	(in thousands)	
Computers and equipment	\$ 1,922	\$ 1,883
Machinery and equipment	4,255	4,103
Leasehold improvements	1,171	1,175
Gross property and equipment	7,348	7,161
Less accumulated depreciation	5,247	4,834
Property and equipment, net	<u>\$ 2,101</u>	<u>\$ 2,327</u>

Depreciation expense amounted to approximately \$0.8 million, \$1.1 million, and \$1.1 million in 2009, 2008, and 2007, respectively.

6. Goodwill and Other Intangibles

Goodwill consists of the following:

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
	(in thousands)	
Balance at beginning of year	\$ 11,022	\$ 10,942
Additions for acquisitions	—	—
Adjustments to purchase price on prior year acquisitions	—	80
Balance at end of year	<u>\$ 11,022</u>	<u>\$ 11,022</u>

Other intangibles consist of the following:

	<u>2009</u>			<u>2008</u>		
	<u>Gross Carrying Value</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value of Intangible Assets</u>	<u>Gross Carrying Value</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value of Intangible Assets</u>
	(in thousands)					
Patents	\$ 2,251	\$ 1,044	\$ 1,207	\$ 2,247	\$ 768	\$ 1,479
Trademarks and technology licenses	1,301	636	665	1,242	503	739
Customer relationships	1,738	478	1,260	762	233	529
Other intangible assets	303	119	184	179	43	136
Total identifiable intangible assets	<u>\$ 5,593</u>	<u>\$ 2,277</u>	<u>\$ 3,316</u>	<u>\$ 4,430</u>	<u>\$ 1,547</u>	<u>\$ 2,883</u>

These assets are being amortized over useful lives ranging from 2 to 17 years. The weighted-average amortization period for these intangibles as of December 31, 2009, is 6.82 years. Amortization expense amounted to \$0.6 million, \$0.5 million, and \$0.3 million in 2009, 2008, and 2007, respectively. Amortization expense is included in general and administrative expense.

[Table of Contents](#)

Estimated amortization expense for each of the five succeeding fiscal years, based upon the intangible assets at December 31, 2009, is as follows:

	<u>(in thousands)</u>
2010	\$ 645
2011	619
2012	552
2013	463
2014	310

7. Financing Arrangements

We maintain a \$10.0 million revolving line of credit that provides for up to \$3.0 million in letters of credit. Loans made under this revolving line of credit bear interest at the bank's base rate or LIBOR plus 200 basis points, at our discretion, and are collateralized by substantially all of our assets. The loan agreement requires that we meet certain financial and operating covenants including a required leverage ratio and minimum tangible net worth. On August 23, 2009, we extended the revolving line of credit to August 23, 2011. The extended agreement requires us to pay an annual commitment fee equal to 0.30% of the commitment amount, which is currently \$10.0 million. As of December 31, 2009 and December 31, 2008, we did not have an outstanding balance under this facility and we were in compliance with these covenants.

Our Biomateriali subsidiary had two existing revolving lines of credit with their bank for a total of approximately \$0.7 million to be used in connection with the financing of sales to certain customers at the date we acquired it. Loans made under these lines bear interest at 20% per annum. Both lines were paid in full and closed in January 2008.

Also, as part of the purchase of Biomateriali, we assumed a loan from the Italian government under a program that provides funding to certain businesses in Italy through a combination of grants and loans if certain requirements are met. In September 2009, the Italian government issued the second and final portion of the loan for approximately \$0.1 million. The loan is payable in ten annual payments of principal and interest at an interest rate of 0.74%. The present value of the loan was recorded as of the date the proceeds were received using our incremental borrowing rate. Interest is being imputed on the loan, and the difference between the present value and the amount due will be amortized using the effective interest method over the period that the loan is outstanding. The amortization will be recorded as interest expense. The amount of the loan outstanding was approximately \$0.2 million and \$0.1 million as of December 31, 2009 and December 31, 2008, respectively, and has been included in our balance sheet in long-term debt. The loan is due in installments through 2018.

8. Accrued Expenses

Accrued expenses consist of the following:

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
	<u>(in thousands)</u>	
Compensation and related taxes	\$ 3,273	\$ 3,473
Income and other taxes	421	492
Professional fees	348	452
Other	1,370	1,126
Total	<u>\$5,412</u>	<u>\$ 5,543</u>

9. Commitments and Contingencies

Leases

We conduct certain of our operations in leased facilities, which are accounted for as operating leases. Certain leases include renewal options. Rent expense was \$1.3 million in 2009, \$1.5 million in 2008, and \$1.2 million in 2007. In addition, we lease automobiles and equipment under operating leases. There were no assets held under capital leases at December 31, 2009, 2008 and 2007.

At December 31, 2009, the minimum rental commitments under all non-cancelable operating leases with initial or remaining terms of more than one year, for each of the following fiscal years, are as follows:

	Operating Leases (in thousands)
2010	\$ 990
2011	555
2012	117
2013	14
2014	9
Total	<u>\$ 1,685</u>

On March 23, 2010, we extended our lease of our manufacturing facility in Burlington, Massachusetts through 2017. Additionally, we entered into a lease for an additional 16,629 square feet in an adjacent facility in Burlington, Massachusetts through 2017 while terminating the lease to our Burlington storage facility. The operating lease commitments resulting from these amendments are not included in the table above.

Purchase Commitments

As part of our normal course of business, we have purchase commitments to purchase \$18.4 million of inventory through 2015. The purchase commitments for inventory are to be used in operations over the normal course of business and do not represent excess commitments or loss contracts.

Other Commitments

As discussed in Note 3, we purchased certain patent applications and in-process research and development which included earn-out payments associated with the commercialization of the device in the European Union and the United States as part of the consideration. The earn-out payments are payable quarterly at approximately the rate of two times sales for the four quarters. The European earn-out period is measured from December 23, 2009 through December 22, 2010. We recorded an intangible asset and a liability of approximately \$5,000 related to the 2009 sales volume. The United States earn-out period is measured for four quarters following the first commercial sale in the United States. We consider the earn-out payments associated with the commercialization of the products in Europe and the United States to be contingent consideration that will be recorded as additional intangible assets in the periods that the contingency is resolved.

10. Income Taxes

Income (loss) before income taxes is as follows:

	Year ended December 31,		
	2009	2008 (in thousands)	2007
United States	\$ 5,127	\$ 78	(\$ 1,235)
Foreign	(2,912)	(2,899)	(1,467)
Total	<u>\$ 2,215</u>	<u>(\$ 2,821)</u>	<u>(\$ 2,702)</u>

[Table of Contents](#)

Certain of our foreign subsidiaries are included in the U.S. tax return as branches but are included as foreign for purposes of the table above.

The provision (benefit) for income taxes is as follows:

	Year ended December 31,		
	2009	2008	2007
	(in thousands)		
Current:			
Federal	\$ 133	\$ 17	(\$564)
State	5	25	(35)
Foreign	253	202	192
	391	244	(407)
Deferred:			
Federal	260	262	663
State	22	9	3
Foreign	(56)	(22)	(27)
	226	249	639
	<u>\$617</u>	<u>\$ 493</u>	<u>\$ 232</u>

We have reviewed the tax positions taken, or to be taken, in its tax returns for all tax years currently open to examination by a taxing authority. As of December 31, 2009, the gross amount of unrecognized tax benefits exclusive of interest and penalties was \$299,000. We have identified no uncertain tax positions for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease within the 12 months ending December 31, 2010. We remain subject to examination until the statute of limitations expires for each respective tax jurisdiction. A reconciliation of beginning and ending amount of our unrecognized tax benefits is as follows:

	2009	2008
	(in thousands)	
Unrecognized tax benefits at the beginning of year	\$ 299	\$ 170
Increases in unrecognized tax benefits as a result of tax positions taken during the period	—	129
Decreases in unrecognized tax benefits as a result of tax positions taken during the period	—	—
Amount of decreases in the unrecognized tax benefits relating to settlements with taxing authorities	—	—
Reductions to unrecognized tax benefits as a result of a lapse of the applicable statutes of limitations	—	—
Unrecognized tax benefits at the end of the year	<u>\$299</u>	<u>\$299</u>

[Table of Contents](#)

Deferred taxes are attributable to the following temporary differences:

	As of December 31,	
	2009	2008
	(in thousands)	
Deferred tax assets:		
Inventory	\$ 563	\$ 497
Net operating loss carryovers	3,238	3,724
Tax credit carryovers	891	639
Reserves and accruals	159	513
Property and equipment	79	77
Other intangibles	1,291	0
Other	347	249
Total deferred tax assets	6,568	5,699
Deferred tax liabilities:		
Other intangibles	0	(329)
Goodwill	(1,608)	(1,326)
Total deferred tax liabilities	(1,608)	(1,655)
Net deferred tax assets before valuation allowance	4,960	4,044
Valuation allowance	(6,510)	(5,369)
Net deferred tax liability	(1,550)	(1,325)
Net short-term deferred tax liability (asset)	4	65
Non-current deferred tax liability	<u>(\$ 1,546)</u>	<u>(\$ 1,260)</u>

We have assessed the need for a valuation allowance against our deferred tax assets and concluded that a valuation allowance against substantially all deferred tax assets is warranted at December 31, 2009 and 2008 because, based on the weight of available evidence, we believe it is more likely than not that such assets will not be realized. In reaching this conclusion, we evaluated all relevant criteria including the existence of temporary differences reversing in the carryforward period. The valuation allowance against these deferred tax assets may require adjustment in the future based on changes in the mix of temporary differences, changes in tax laws, and operating performance.

As of December 31, 2009, we have net operating loss carryforwards in the United States of \$1.8 million that begin to expire in 2028. We also have state net operating loss carryforwards of \$2.3 million that expire at various times beginning in 2013 through 2029. In addition, we have net operating loss carryforwards in France of \$2.0 million that have no expiration, Japan of \$1.2 million that begin to expire in 2013 and Italy of \$5.0 million of which \$0.6 million does not expire and \$4.4 million begin to expire in 2013. We also have federal research and development tax credit carryforwards of approximately \$0.5 million and state tax credit carryforwards of approximately \$0.4 million that are available to reduce future tax liabilities, which expire at various dates beginning in 2011 through 2029. Included in the net operating loss carryforwards are stock option deductions of approximately \$0.1 million. The benefit of these tax deductions will be credited to additional paid-in capital upon being realized. Ownership changes, as defined by Internal Revenue Code, may limit the amount of net operating losses and research and experimentation credit carryforwards that can be utilized annually to offset future taxable income and taxes payable.

[Table of Contents](#)

A reconciliation of the federal statutory rate to our effective tax rate is as follows:

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Federal statutory rate	34.0%	34.0%	34.0%
State tax, net of federal benefit	1.2%	(0.3%)	0.2%
Effect of foreign taxes	2.3%	1.8%	4.7%
Valuation allowance	(20.1%)	(49.3%)	(40.1%)
Permanent differences	9.3%	(2.6%)	(2.4%)
Uncertain tax provisions	0.0%	0.0%	1.7%
Other	1.2%	(1.1%)	(6.7%)
Effective tax rate	<u>27.9%</u>	<u>(17.5%)</u>	<u>(8.6%)</u>

We are not currently under audit in any tax jurisdictions.

We were examined by the Internal Revenue Service (IRS) for our 2004 and 2005 income tax returns. In 2007 the IRS proposed and we agreed to a final adjustment to the previously reported returns resulting in a payment of \$0.4 million in April 2007, which amount was included in accrued expenses as of December 31, 2006. We were examined by the German federal tax authority in 2007, for our 2004, 2005, and 2006 tax returns. The German federal tax authority proposed and we agreed to a final adjustment to the previously reported returns resulting in an assessment of \$0.3 million in 2007, which provision had been previously made as of December 31, 2006.

As of January 1, 2010, a summary of the tax years that remain subject to examination in our most significant tax jurisdictions are:

United States—Federal	2006 and forward
Germany	2007 and forward
Italy	2005 and forward
Japan	2004 and forward

11. Stockholders' Equity

Stock Award Plans

Under our 1997, 1998, 2000, and 2004 stock option plans, we authorized for the granting of options in the form of incentive stock options or nonqualified options to employees, directors, and consultants to purchase up to 1,688,702 shares of common stock. The stock options provide the holder the right to purchase common stock at a specific exercise price and the expected term will not exceed ten years. Incentive stock options are required to be issued at not less than fair market value at the date of the grant and generally vest over four or five years. The term of the options is determined by our Board of Directors but in no event will exceed ten years from date of grant, except with respect to one non-qualified option issued under our 1997 stock option plan.

In May 2006 we approved a 2006 Stock Option and Incentive Plan (the 2006 Plan), which became effective upon the initial public offering. In June 2009, we amended the 2006 Plan to increase the aggregate pool of available shares from 750,000 to 1,500,000 of common stock. The plan allows for granting of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock units, unrestricted stock awards, and deferred stock awards to our officers, employees, directors, and consultants. We have reserved for issuance of an aggregate of 1,500,000 shares of common stock under the 2006 Plan. In connection with the adoption of the 2006 Plan, no further option grants are permitted under the 1997, 1998, 2000, and 2004 stock option plans and any expirations, cancellations, or terminations under the previous plans are available for issuance under the 2006 Plan. We may satisfy awards upon exercise of stock options or RSUs with either newly issued or treasury shares. The total number of shares currently authorized for stock award plans is 3,118,003 of which approximately 221,513 remain available for grant as of December 31, 2009.

[Table of Contents](#)

We have computed the fair value of employee stock options using the following weighted average assumptions:

	2009	2008	2007
Dividend yield	0.0%	0.0%	0.0%
Volatility	80.5%	52.1%	65.0%
Risk-free interest rate	2.2%	3.2%	4.9%
Weighted average expected option term (in years)	4.5	4.7	5.0
Weighted average fair value per share of options granted	\$ 1.88	\$ 1.59	\$ 3.59
Aggregate intrinsic value of options exercised	\$67,951	\$155,054	\$735,173

A summary of option activity as of December 31, 2009 and the year then ended is presented below:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Balance outstanding at December 31, 2008	1,421,003	\$ 5.52	7.79	\$ 665,575
Granted(1)	382,274	\$ 3.12		\$ —
Exercised(2)	(51,520)	\$ 3.08		\$ 67,951
Forfeited	(29,417)	\$ 3.76		\$ —
Balance outstanding at December 31, 2009(3)	1,722,610	\$ 5.09	6.80	\$2,697,509
Vested and exercisable at December 31, 2009	1,043,953	\$ 5.92	7.73	\$ 1,608,490
Expected to vest at December 31, 2009(4)	555,820	\$ 3.81	1.96	—
Total	1,599,773			\$ 1,608,490

- (1) The aggregate intrinsic value represents the difference between the exercise price and the closing price of our stock on the day of grant.
- (2) The aggregate intrinsic value represents the difference between the exercise price and the closing price of our stock on the day of exercise.
- (3) The aggregate intrinsic value represents the difference between the exercise price and \$5.00, the closing price of our stock on December 31, 2009, for all in-the-money options outstanding.
- (4) Options outstanding that are expected to vest are net of estimated future option forfeitures in accordance with the provisions set forth by the FASB.

Information about stock options outstanding and exercisable as of December 31, 2009, is as follows:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Outstanding as of December 31, 2009	Weighted average Remaining Contractual Life	Weighted average exercise price	Shares	Weighted average exercise price
\$ 0.00 – \$ 1.24	288,988	17.42	\$ 0.10	288,988	\$ 0.10
\$ 2.48 – \$ 3.70	692,909	5.36	\$ 3.19	100,559	\$ 3.34
\$ 3.71 – \$ 4.95	43,958	1.98	\$ 4.31	37,750	\$ 4.30
\$ 4.96 – \$ 6.19	96,249	3.49	\$ 5.99	65,347	\$ 6.00
\$ 6.20 – \$ 7.42	49,500	2.63	\$ 6.69	36,167	\$ 6.88
\$ 7.43 – \$ 8.66	253,164	3.25	\$ 7.88	253,164	\$ 7.88
\$ 8.67 – \$ 9.90	10,819	4.16	\$ 8.73	10,819	\$ 8.73
\$ 9.91 – \$11.13	54,365	5.15	\$10.66	44,656	\$10.65
\$11.14 – \$12.37	232,658	5.45	\$11.87	206,503	\$11.86
	<u>1,722,610</u>	6.80	\$ 5.09	<u>1,043,953</u>	\$ 5.92

[Table of Contents](#)

We account for stock options issued to non-employees using the fair value method. We compute the fair value of non-employee stock options using the Black-Scholes option-pricing model using an appropriate volatility factor and record the fair value of non-employee stock options as expense over either the vesting term of the option or the service period with the following assumptions:

	<u>2008</u>	<u>2007</u>
Dividend yield	0.0%	0.0%
Volatility	57.0%	65.0%
Risk-free interest rate	3.5%	4.7%
Weighted average expected option term (in years)	2.0	3.5

We recorded approximately (\$8,000) during 2008, and \$9,000 during 2007 of compensation (credits) expense related to stock options granted to non-employees. There were no unvested options to non-employees in 2009.

Restricted Stock Units

Beginning in 2006, we also issue restricted stock units as an additional form of equity compensation to our employees, officers, and directors, pursuant to our stockholder-approved 2006 Plan. RSUs entitle the grantee to an issuance of stock at no cost and generally vest over a period of time determined by our Board of Directors at the time of grant based upon the continued service to the Company. Unvested RSUs are forfeited and canceled as of the date that employment or service to the Company terminates. RSUs are settled in shares of our common stock upon vesting. We may repurchase common stock upon our employees' vesting in RSUs in order to cover any minimum tax withholding liability as a result of the RSUs having vested. During the year ended December 31, 2009, we repurchased 43,281 of our \$0.01 par value common stock at a per-share price of \$3.80 and an aggregate purchase price of approximately \$165,000. During the year ended December 31, 2008, we repurchased 23,432 of our \$0.01 par value common stock at a per-share price of \$2.84 and an aggregate purchase price of approximately \$67,000. The value of the shares represented the amount required to satisfy the employees' minimum obligations with respect to withholding taxes in connection with the vesting of shares of RSUs.

A summary of our RSU activity, which is subject to fair value accounting requirements, is as follows:

	<u>Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Balance outstanding at December 31, 2007	247,935	\$ 6.24
Granted	387,536	\$ 3.46
Vested(1)	(65,439)	\$ 6.20
Canceled	(74,958)	\$ 5.61
Balance outstanding at December 31, 2008	<u>495,074</u>	\$ 4.17
Granted	209,000	\$ 2.99
Vested(1)	(138,469)	\$ 4.69
Canceled	(18,072)	\$ 3.72
Balance outstanding at December 31, 2009	<u>547,533</u>	\$ 3.60

(1) The number of RSUs vested includes the shares that we withheld on behalf of employees to satisfy minimum statutory tax withholding requirements.

The fair values of the RSUs that vested during 2009, 2008, and 2007 were \$0.6 million, \$0.4 million, and \$0.2 million, respectively.

Employee Stock Purchase Plan

On July 13, 2009, our Board of Directors elected to terminate our Employee Stock Purchase Plan effective following the six-month offering period ending July 31, 2009. Our employee stock purchase plan had enabled eligible employees to purchase shares of our common stock. Eligible employees could purchase shares during six-month offering periods commencing on February 1 and August 1 of each year at a price per share equal to 90 percent of the fair market value of our common stock on the last date of each six-month offering period. Participating employees could elect to have up to ten percent of their base pay withheld and applied toward the purchase of such shares. The rights of participating employees terminate upon voluntary withdrawal from the plan at any time or upon termination of employment. On February 1, 2009, 10,698 shares were purchased at a purchase price of \$1.91 per share. On July 31, 2009, 7,680 shares were purchased at a purchase price of \$3.11 per share.

12. Profit-Sharing Plan

We offer a 401(k) profit-sharing plan (the Plan) covering eligible U.S. employees to make tax deferred contributions, a portion of which are matched by us. We may make discretionary matching contributions to the Plan in an amount determined by our Board of Directors. Company contributions vest ratably over six years of employment and amounted to approximately \$0.1 million for 2009, \$0.2 million for 2008, and \$0.3 million for 2007.

13. Restructuring Charges

In September 2007, we entered into termination agreements with two former distributors in Europe. The termination fee payments amounted to \$1.1 million in total, including \$0.7 for contractual obligations associated with termination agreements with our former distributor in Italy. No further costs are expected to be incurred with respect to these agreements.

In 2008, we initiated reductions in force of 32 and eight employees in the first and third quarters, respectively. We incurred \$0.4 million of severance charges related to the reductions in force in 2008, of which \$0.1 million was paid in February 2009. No further costs are expected to be incurred with respect to these reductions in force.

In March 2009, we incurred \$1.8 million of one-time restructuring charges, related to the termination of our Biomateriali subsidiary's distribution agreement with Edward Lifesciences as discussed in Note 3.

The components of the restructuring charges are as follows:

	Year ended December 31,		
	2009	2008	2007
Distributor termination costs	\$ 1,777	\$ 712	\$ 1,054
Severance	—	435	—
Other	—	—	(12)
Total	<u>\$ 1,777</u>	<u>\$ 1,147</u>	<u>\$ 1,042</u>

[Table of Contents](#)

Activity related to accrued restructuring costs is as follows:

	Year ended December 31,		
	2009	2008	2007
Balance at beginning of year	\$ 83	\$ 1,129	\$ 46
Plus:		(in thousands)	
Current year restructuring costs	1,777	1,147	1,042
Other	—	22	75
Less:			
Payments for termination of contractual obligations	1,777	1,862	—
Payment of employee severance costs	83	353	34
Balance at end of year	\$ —	\$ 83	\$ 1,129

14. Segment and Enterprise-wide Disclosures

The FASB establishes standards for reporting information regarding operating segments in annual financial statements. Operating segments are identified as components of an enterprise about which separate, discrete financial information is available for evaluation by the chief operating decision-maker in making decisions on how to allocate resources and assess performance. We view our operations and manage our business as one operating segment. No discrete operating information other than product sales is prepared by us, except by geographic location, for local reporting purposes.

We sell products in three product categories; Endovascular, Vascular, and General Surgery, and have also derived a limited amount of revenue from manufacturing devices under private label manufacturing arrangements. Net sales in these product categories were as follows:

	Year ended December 31,		
	2009	2008	2007
Endovascular	\$ 14,782	\$ 15,946	\$ 14,143
Vascular	31,846	28,573	23,420
General Surgery	3,836	3,928	3,883
Branded product sales	50,464	48,447	41,446
OEM	444	273	0
Net sales	\$ 50,908	\$ 48,720	\$ 41,446

Most of our revenues were generated in the United States, Europe, and Japan, and substantially all of our assets are located in the United States. We analyze our sales using a number of approaches, including sales by legal entity. LeMaitre Vascular GmbH, our German subsidiary, records all sales in Europe and to distributors worldwide, excluding sales in France (LeMaitre Vascular SAS); Italy (LeMaitre Vascular S.r.l.); Japan, Korea, and Taiwan (LeMaitre Vascular GK); and private label manufacturing sales (Biomateriali S.r.l.). Net sales to unaffiliated customers by legal entity were as follows:

	Year ended December 31,		
	2009	2008	2007
LeMaitre Vascular, Inc.	\$ 29,420	\$ 26,899	\$ 25,480
LeMaitre Vascular GmbH	15,802	16,356	14,755
Other	5,686	5,465	1,211
Net sales	\$ 50,908	\$ 48,720	\$ 41,446

[Table of Contents](#)

Total property and equipment held by legal entity were as follows:

	As of December 31,		
	2009	2008	2007
		(in thousands)	
LeMaitre Vascular, Inc.	\$1,254	\$1,354	\$1,951
LeMaitre Vascular GmbH	324	343	396
Other	523	630	544
Total long lived assets	<u>\$2,101</u>	<u>\$2,327</u>	<u>\$2,891</u>

15. Supplemental Cash Flow Information

Supplemental disclosures of cash flow information are as follows:

	Year ended December 31,		
	2009	2008	2007
		(in thousands)	
Cash paid (refund) for income taxes, net	\$ 431	\$(298)	\$ 920
Cash paid for interest	—	—	1
Supplemental non-cash financing activities:			
Acquisition-related obligations to sellers	—	77	1,646
Common stock repurchased for RSU tax withholdings	165	67	82

16. Fair Value Measurements

The fair value accounting guidance requires that assets and liabilities carried at fair value be classified and disclosed in one of the following three categories:

- Level 1—Quoted prices in active markets for identical assets or liabilities
- Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Our available-for-sale investments are subject to fair value accounting which includes cash equivalents and short-term investments. The following table details the fair value measurements within the fair value hierarchy of our financial assets (in thousands) as of December 31, 2009, which were valued using Level 2 inputs (significant and observable assumptions) as follows:

Corporate bonds	\$ 450
Asset backed securities	358
	<u>\$ 808</u>

As of December 31, 2009, we had cash equivalents in repurchase agreements and US treasury notes that were valued using Level 1 inputs (quoted market prices for identical assets) as follows:

Repurchase agreements	\$ 12,300
US Treasury Notes	7,499
	<u>\$19,799</u>

[Table of Contents](#)

17. Quarterly Financial Data (unaudited)

<u>2009</u>	<u>Three months ended</u>			
	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31</u>
		(in thousands, except per share data)		
Total net sales	\$ 11,348	\$ 12,630	\$ 13,346	\$ 13,584
Gross profit	8,266	9,122	9,743	10,173
Income (loss) from operations	(1,566)	993	1,293	1,229
Net income (loss)	(1,881)	925	1,285	1,269
Net income (loss) available to common stockholders:				
Basic	(\$ 0.12)	\$ 0.06	\$ 0.08	\$ 0.08
Diluted	(\$ 0.12)	\$ 0.06	\$ 0.08	\$ 0.08

<u>2008</u>	<u>Three months ended</u>			
	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31</u>
		(in thousands, except per share data)		
Total net sales	\$ 11,847	\$ 12,739	\$ 12,023	\$ 12,111
Gross profit	8,490	8,886	8,103	8,424
Income (loss) from operations	(2,585)	(869)	170	354
Net income (loss)	(2,564)	(926)	(136)	312
Net income (loss) available to common stockholders:				
Basic	(\$ 0.17)	(\$ 0.06)	(\$ 0.01)	\$ 0.02
Diluted	(\$ 0.17)	(\$ 0.06)	(\$ 0.01)	\$ 0.02

SCHEDULE II
LEMAITRE VASCULAR
VALUATION AND QUALIFYING ACCOUNTS
FOR THE YEARS ENDED DECEMBER 31, 2009, 2008, AND 2007

<u>Description</u>	<u>COLUMN A</u> Balance at Beginning of Period	<u>COLUMN B</u> Additions Charged to Income	<u>COLUMN C</u> Deductions from Reserves	<u>COLUMN D</u> Balance at End of Period
(in thousands)				
Reserves deducted from assets to which they apply:				
Allowance for doubtful accounts and sales returns:				
Year ended December 31, 2009	\$ 160	\$ 75	\$ 76	\$ 159
Year ended December 31, 2008	219	27	86	160
Year ended December 31, 2007	102	197	80	219

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
3.1	Amended and Restated By-laws of the Registrant	S-1/A	5/26/06	3.1	
3.2	Second Amended and Restated Certificate of Incorporation of the Registrant				X
4.1	Specimen Certificate evidencing shares of common stock	S-1/A	6/22/06	4.1	
10.1	Northwest Park Lease dated March 31, 2003, by and between the Registrant and Roger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, as amended	S-1	4/25/06	10.1	
10.2	Registration Rights Agreement dated June 17, 1998, by and between the Registrant and Housatonic Equity Investors, L.P.	S-1/A	5/26/06	10.2	
10.3	Patent Sublicense Agreement dated March 7, 2003, by and between IMPRA, Inc. and Endomed, Inc.	S-1	4/25/06	10.3	
10.4	Confirmation and Agreement dated February 2, 2005, by and between the Registrant and Bard Peripheral Vascular, Inc.	S-1	4/25/06	10.4	
10.5	License Agreement dated February 11, 1992, by and between United States Surgical Corporation and Spinnaker R&D Associates, as amended	S-1	4/25/06	10.5	
10.6	Side Letter Agreement dated January 30, 2004, by and between the Registrant and Spinnaker R&D Associates	S-1	4/25/06	10.6	
10.7	Executive Retention and Severance Agreement dated October 10, 2005, by and between the Registrant and George W. LeMaitre†	S-1/A	5/26/06	10.7	
10.8	Managing Director Employment Agreement dated October 1, 2008, by and between LeMaitre Vascular GmbH and Peter Gebauer, as amended†	10-K	3/31/09	10.8	
10.9	Employment Agreement dated June 20, 2006, by and between the Registrant and David Roberts†	S-1/A	6/22/06	10.24	
10.10	Employment Agreement dated April 20, 2006, by and between the Registrant and Joseph P. Pellegrino (corrected)†	S-1/A	6/22/06	10.10	
10.11	1997 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.11	
10.12	1998 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.12	
10.13	2000 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.13	
10.14	2004 Stock Option Plan and form of agreements thereunder†	S-1	4/25/06	10.14	
10.15	Amended and Restated 2006 Stock Option and Incentive Plan and form of agreements thereunder†	8-K	6/23/09	10.1	
10.16	Form of Indemnification Agreement between the Registrant and its directors and executive officers	S-1/A	5/26/06	10.17	
10.17	Guaranty of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated March 29, 2001, as amended	S-1/A	6/22/06	10.22	
10.18	Letter Agreement with Brown Brothers Harriman & Co. dated September 25, 2006	S-1/A	10/3/06	10.26	

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
10.19	Amendment to Guaranty of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated September 25, 2006	S-1/A	10/3/06	10.28	
10.20	Security Agreement of Vascutech Acquisition LLC in favor of Brown Brothers Harriman & Co. dated March 29, 2001, as Amended	S-1/A	10/3/06	10.29	
10.21	Letter Agreement with Brown Brothers Harriman & Co. dated August 23, 2008	10-K	3/31/09	10.29	
10.22	Form of Restricted Stock Unit Award Agreement under the Registrant's 2006 Stock Option and Incentive Plan†	8-K	12/26/06	99.1	
10.23	Management Incentive Compensation Plan†	8-K	4/27/07	10.1	
10.24	Second Amendment of Lease dated May 21, 2007, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	8-K	6/15/07	10.1	
10.25	Fourth Amended and Restated Revolving Loan and Security Agreement dated August 23, 2007, between the Registrant and Brown Brothers Harriman & Co.	8-K	8/29/07	10.1	
10.26	Third Amended and Restated Promissory Note (Secured) in favor of Brown Brothers Harriman & Co. dated August 23, 2007	8-K	8/29/07	10.2	
10.27	Third Amendment of Lease dated February 26, 2008, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	8-K	4/10/08	10.1	
10.28	Fourth Amendment of Lease dated October 31, 2008, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant	10-K	3/31/09	10.36	
10.29	First Amendment to Executive Retention and Severance Agreement dated December 23, 2008, by and between the Registrant and George W. LeMaitre†	10-K	3/31/09	10.37	
10.30	First Amendment to Employment Agreement dated December 19, 2008, by and between the Registrant and David Roberts†	10-K	3/31/09	10.38	
10.31	First Amendment to Employment Agreement dated December 19, 2008, by and between the Registrant and Joseph P. Pellegrino†	10-K	3/31/09	10.39	
10.32	Letter Agreement with Brown Brothers Harriman & Co. dated September 14, 2009	8-K	9/18/09	10.1	
10.33	Fifth Amendment of Lease dated March 23, 2010, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant				X
10.34	Northwest Park Lease dated March 23, 2010, by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates, and Registrant				X

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated By Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Date</u>	<u>Number</u>	
21.1	List of Subsidiaries				X
23.1	Consent of Ernst & Young LLP				X
31.1	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				X
31.2	Certification of Chief Financial Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				X
32.1	Certification of Chief Executive Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 36 of Title 18 of the United States Code (18 U.S.C. §1350)**				X
32.2	Certification of Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 36 of Title 18 of the United States Code (18 U.S.C. §1350)**				X

† Indicates a management contract or any compensatory plan, contract, or arrangement.

** The certification attached as Exhibit 32.1 and 32.2 that accompanies this Annual Report on Form 10-K, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of LeMaitre Vascular, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
LEMAITRE VASCULAR, INC.**

LeMaitre Vascular, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is LeMaitre Vascular, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was June 15, 1998 (the "Original Certificate"). The name under which the Corporation filed the Original Certificate was Vascutech, Inc.

2. This Second Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Amended and Restated Certificate of Incorporation that was filed with the Secretary of State of the State of Delaware on October 16, 2006, as amended (the "Amended and Restated Certificate"), and was duly adopted in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law (the "DGCL").

3. The text of the Amended and Restated Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I

The name of the Corporation is LeMaitre Vascular, Inc.

ARTICLE II

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

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have authority to issue is One Hundred Five Million (105,000,000) shares, of which (i) One Hundred Million (100,000,000) shares shall be a class designated as common stock, par value \$0.01 per share (the "Common Stock"), (ii) Five Million (5,000,000) shares shall be a class designated as undesignated preferred stock, par value \$0.01 per share (the "Undesignated Preferred Stock").

The number of authorized shares of the class of Common Stock and Undesignated Preferred Stock may from time to time be increased or decreased (but not below the number of shares outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock entitled to vote, without a vote of the holders of the Undesignated Preferred Stock (except as otherwise provided in any certificate of designations of any series of Undesignated Preferred Stock).

The powers, preferences and rights of, and the qualifications, limitations and restrictions upon, each class or series of stock shall be determined in accordance with, or as set forth below in, this Article IV.

A. COMMON STOCK

Subject to all the rights, powers and preferences of the Undesignated Preferred Stock and except as provided by law or in this Article IV (or in any certificate of designations of any series of Undesignated Preferred Stock):

(a) the holders of the Common Stock shall have the exclusive right to vote for the election of directors of the Corporation (the "Directors") and on all other matters requiring stockholder action, each outstanding share entitling the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate (or on any amendment to a certificate of designations of any series of Undesignated Preferred Stock) that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series are entitled to vote, either separately or together with the holders of one or more other such series, on such amendment pursuant to this Certificate (or pursuant to a certificate of designations of any series of Undesignated Preferred Stock) or pursuant to the DGCL;

(b) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, but only when and as declared by the Board or any authorized committee thereof; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock.

B. UNDESIGNATED PREFERRED STOCK

The Board of Directors or any authorized committee thereof is expressly authorized, to the fullest extent permitted by law, to provide for the issuance of the shares of Undesignated Preferred Stock in one or more series of such stock, and by filing a certificate pursuant to applicable law of the State of Delaware, to establish or change from time to time the number of shares of each such series, and to fix the designations, powers, including voting powers, full or limited, or no voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

ARTICLE V

STOCKHOLDER ACTION

1. Action without Meeting. Except as otherwise provided herein, any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.

2. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

ARTICLE VI

DIRECTORS

1. General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

2. Election of Directors. Election of Directors need not be by written ballot unless the By-laws of the Corporation (the “By-laws”) shall so provide.

3. Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors, other than those who may be elected by the holders of any series of Undesignated Preferred Stock, shall be classified, with respect to the term for which they severally hold office, into three classes, as nearly equal in number as reasonably possible. The initial Class I Directors of the Corporation shall be George W. LeMaitre, Michael C. Jackson and David B. Roberts; the initial Class II Directors of the Corporation shall be George D. LeMaitre, Duane M. Desisto and Guido J. Neels; and the initial Class III Directors of the Corporation shall be Cornelia W. LeMaitre, Lawrence J. Jasinski and David N. Gill. The initial Class I Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2007, the initial Class II Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2008, and the initial Class III Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2009. At each annual meeting of stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of Undesignated Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificate of designations applicable thereto.

4. Vacancies. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in size of the Board of Directors, or the death, resignation, disqualification or removal of a Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the stockholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director’s successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors, when the number of Directors is increased or decreased, the Board of Directors shall, subject to Article VI.3 hereof, determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

5. Removal. Subject to the rights, if any, of any series of Undesignated Preferred Stock to elect Directors and to remove any Director whom the holders of any such stock have the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office (i) only with cause and (ii) only by the affirmative vote of the holders of 75% or more of the shares then entitled to vote at an election of Directors. At least forty-five (45) days prior to any meeting of stockholders at which it is proposed that any Director be removed from office, written notice of such proposed removal and the alleged grounds thereof shall be sent to the Director whose removal will be considered at the meeting.

ARTICLE VII

LIMITATION OF LIABILITY

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or modification of a person serving as a Director at the time of such repeal or modification.

ARTICLE VIII

AMENDMENT OF BY-LAWS

1. Amendment by Directors. Except as otherwise provided by law, the By-laws of the Corporation may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the Directors then in office.

2. Amendment by Stockholders. The By-laws of the Corporation may be amended or repealed at any annual meeting of stockholders, or special meeting of stockholders called for such purpose as provided in the By-laws, by the affirmative vote of at least 75% of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE IX

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. Whenever any vote of the holders of voting stock is required to amend or repeal any provision of this Certificate, and in addition to any other vote of holders of voting stock that is required by this Certificate or by law, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class, at a duly constituted meeting of stockholders called expressly for such purpose; provided, however, that the affirmative vote of not less than 75% of the outstanding shares entitled to vote on such amendment or repeal, and the affirmative vote of not less than 75% of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of Article V, Article VI, Article VII, Article VIII or Article IX of this Certificate.

[End of Text]

THIS SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this 24th day of October, 2006.

LeMaitre Vascular, Inc.

By: /s/ George W. LeMaitre
George W. LeMaitre,
Chief Executive Officer

FIFTH AMENDMENT OF LEASE

THIS AMENDMENT made and entered into this 23rd day of March, 2010 (the "Effective Date") by and between Rodger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates ("Landlord") and LeMaitre Vascular, Inc. ("Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant entered into a lease dated March 31, 2003, as amended by a First Amendment of Lease dated as of May 21, 2004, a Second Amendment of Lease dated as of May 21, 2007, a Third Amendment of Lease dated as of February 26, 2008 and a Fourth Amendment of Lease dated as of October 31, 2008 (the lease and all amendments are collectively referred to as, the "Lease") for premises (the "Premises") containing 27,098 rentable square feet in the building located at 63 Second Avenue, Burlington, Massachusetts;

WHEREAS, the Expiration Date of the Lease is currently September 30, 2011;

WHEREAS, Concurrently with the execution of this Amendment, Landlord and Tenant have entered into an additional lease for premises containing approximately 27,289 rentable square feet in the building at 53 Second Avenue, Burlington, MA (the "53 Second Ave Lease");

WHEREAS, the parties now wish to amend the Lease to, among other things, extend the term thereof to make it coterminous with the term of the 53 Second Ave Lease;

NOW THEREFORE, in consideration of the 53 Second Ave Lease and mutual agreements contained herein, the parties agree that the Lease shall be amended as follows:

1. The term of the Lease is hereby extended for an additional period beginning on the Effective Date and ending on the date set for expiration of the 53 Second Ave Lease, such that the term of this Lease shall be coterminous with the term of the 53 Second Ave Lease. Currently, the expiration date of the 53 Second Ave Lease and the new Expiration Date of the Lease have not been finally determined, but are anticipated to occur on or about June 30, 2017. Once the Expiration Date of the Lease has been determined, Landlord will send Tenant a written notification stipulating such date. In connection with the foregoing, the parties agree that, in the event Tenant terminates the 53 Second Ave Lease pursuant to the terms thereof, Tenant shall have the right to simultaneously terminate this Lease upon written notice to Landlord. Further, in the event that the landlord terminates the 53 Second Ave Lease pursuant to the terms thereof, this Lease shall also be simultaneously terminated by Landlord, such termination to be effective without the necessity of any notice or other documentation; provided, however, that in the event such termination is an exercise of the landlord's rights under Article 7 of the 53 Second Ave Lease, then Tenant may elect, by written notice given within ten (10) business days following Tenant's receipt of Landlord's notice of termination of the 53 Second Ave Lease, to allow this Lease to continue and not be terminated simultaneously with the 53 Second Ave Lease (in which event, following such notice from Tenant, such simultaneous termination of this Lease shall be deemed null and void and the same shall continue pursuant to the terms hereof, recognizing that the term of this Lease will no longer be coterminus with the 53 Second Ave Lease).

2. Tenant acknowledges it is currently occupying the Premises and shall accept the continued demise of the Premises in the condition it is in on the Effective Date, without any obligation by Landlord to construct or otherwise prepare the Premises for Tenant's continued use and occupancy, and without any representations or warranties on the part of Landlord as the condition or suitability of the Premises for Tenant's use.

3. Commencing on the Effective Date, the Annual Fixed Rent Rate and the Monthly Fixed Rent Rate specified in Section 1.1 of the Lease shall be reduced to \$243,882.00, and \$20,323.50, respectively, and from such date, Paragraph 2 of the Fourth Amendment of Lease shall have no further force or effect. If the Effective Date is not the first day of a calendar month, then Landlord shall apply a credit against the next monthly installment of rent coming due under the Lease for any amounts previously paid by Tenant for the calendar month in which the Effective Date occurs.

4. As of the Effective Date, the amount of the Security and Restoration Deposit specified in Section 1.1 of the Lease shall be reduced to \$50,000.00. Landlord shall transfer and apply the remaining cash balance of \$50,000.00 for Tenant's account under the 53 Second Ave Lease to satisfy the security deposit requirement under that lease.

5. As of the Effective Date, the following paragraph shall be added to the end of Section 4.2.3 of the Lease:

"Tenant and its representatives, at Tenant's sole expense, shall have the right, during customary business hours, to inspect at Landlord's offices, Landlord's books and records relating to Operating Costs for the immediately preceding calendar year. As a condition to performing any such inspection, Tenant and its examiners shall be required to execute and deliver to Landlord an agreement, in form reasonably acceptable to Landlord, agreeing to keep confidential any information which Tenant and the examining party discovers in connection with such examination, except for disclosures required by law, court order or regulatory authorities, or to Tenant's attorneys, accountants, auditors, or potential purchasers of the Tenant company. If Tenant elects to exercise such right, it must provide reasonable prior written notice to Landlord given no later than one hundred and twenty (120) days following Tenant's receipt of Landlord's Statement of Operating Costs for any calendar year and it must complete any such inspection within 60 days of commencement. Landlord agrees to reasonably cooperate with Tenant to enable Tenant to complete its inspection within the time period specified in the preceding sentence. Tenant shall give Landlord a complete copy of the results of its inspection. If it is determined that Tenant is entitled to a refund, then such refund shall either be in cash or applied as a credit to the next due installment of Rent, at the election of Landlord. If it is determined Tenant has underpaid, then Tenant shall pay such amount within thirty (30) days of Landlord's invoice therefor. Tenant agrees to use for such inspection a firm that is reasonably acceptable to Landlord and that is not being paid on a contingency fee basis. If Tenant's audit demonstrates, to Landlord's reasonable satisfaction, that Operating Costs were overstated by more than five

percent (5%), then Landlord shall reimburse Tenant the reasonable cost of the audit (it being agreed that if Tenant's audit does not show such overstatement, Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord in connection with such audit)."

6. As of the Effective Date, the last sentence of the second paragraph on Section 4.4 of the Lease shall be deleted in its entirety and replaced by the following:

"Within forty-five (45) days following Tenant's yield-up of the Premises in accordance with the terms hereof, Landlord shall refund to Tenant said deposit, or so much thereof as may remain after application toward any satisfaction of any obligation of Tenant."

7. As of the Effective Date, the following shall be added to the end of Section 5.2 of the Lease:

"Notwithstanding the foregoing, if Landlord fails to provide any service that it is required to provide above so that Tenant's ability to conduct business at the Premises is materially adversely affected for a period of five (5) consecutive business days after written notice thereof from Tenant to Landlord, then, provided that such failure or Landlord's inability to cure such condition is not (i) due to a cause beyond Landlord's reasonable control and/or (ii) generally affecting other buildings in the vicinity of the Premises (such as a neighborhood power outage or a water main break) or a fire or other casualty or taking (which shall be governed by Article 7 below) or the fault or negligence of Tenant or any of its agents, employees or contractors, then as Tenant's sole remedy the Fixed Rent and Additional Rent shall be equitably abated based upon the impact thereof on Tenant's ability to conduct business in the Premises until such service(s) is restored to their level prior to the interruption."

8. As of the Effective Date, Section 5.7 of the Lease shall be deleted in its entirety and replaced with the following:

"5.7 Landlord's Indemnification. Landlord shall indemnify, defend and save Tenant harmless from and against all claims brought by, liability imposed by, or loss or damage arising from the actions of (including the cost of any cleanup or remediation) a governmental authority having jurisdiction over the Property and/or the Park caused by a release or threat of release of Hazardous Materials (as defined in Section 11.1 below) from or at the Property and/or the Park prior to the Commencement Date or, if after the Commencement Date, to the extent caused by Landlord's use, handling, holding, transporting, storage or disposal of Hazardous Materials including, without limitation, liability under any federal, state or local laws, requirements and regulations; provided, however, that this indemnity shall not apply to the extent such claim, liability, loss and/or damage is attributable or pertains to the following: (i) in the event (but only in the event) Tenant uses, stores, handles, holds, transports or disposes at, on or under the Property the Hazardous Materials which are the subject of such claim, liability, loss and/or damage, unless Tenant provides evidence reasonably satisfactory to Landlord that the Hazardous Materials which are the subject of such claim, liability, loss and/or damage are not caused by or attributable in whole or in part to Tenant, (ii) in the event Tenant or its agents, employees or contractors causes or contributes to the release or threat of release of Hazardous Materials, or

(iii) to any claim brought or liability imposed under any law, regulation or ordinance, or common law, arising out of any personal injury or damage suffered or alleged to have been suffered by Tenant's employees, agents, invitees or contractors. The provisions of this Section 5.7 shall survive the expiration or earlier termination of this Lease."

9. As of the Effective Date, Section 6.1.5 of the Lease shall be deleted in its entirety and replaced with the following:

"6.1.5 *Indemnification*. To save harmless, exonerate and indemnify Landlord, its agents (including, without limitation, Landlord's managing agent) and employees (such agents and employees being referred to collectively as the "Landlord Related Parties") from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Premises and the Property to the extent arising out of the use or occupancy of the Premises by Tenant or by any person claiming by, through or under Tenant (including, without limitation, all patrons, employees and customers of Tenant), or arising out of any delivery to or service supplied to the Premises requested by or on account of Tenant, or on account of or based upon anything whatsoever done on the Premises, except to the extent the same was caused by the gross negligence, fault or misconduct of Landlord or the Landlord Related Parties. In respect of all of the foregoing, Tenant shall indemnify Landlord and the Landlord Related Parties from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against Landlord or the Landlord Related Parties by reason of any such claim, Tenant, upon notice from Landlord and at Tenant's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Landlord. Landlord shall not settle any such claim without first consulting with Tenant and obtaining the consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed."

10. As of the Effective Date, Section 8.1 of the Lease is amended by including the following item after what is noted in (f) of that Section:

"or (g) if Tenant is in default of the 53 Second Ave Lease beyond applicable notice and cure periods,"

11. As of the Effective Date, Section 11.8 of the Lease shall be deleted in its entirety and replaced with the following:

"11.8 *Indemnification*. Tenant agrees to indemnify and save Landlord harmless from all claims, liability, loss or damage to the extent arising on account of the use, release, threat of release, holding, handling, transport, storage, or disposal of Hazardous Materials by Tenant, its employees, agents or contractors at, on, upon or from the Premises or Property from and after the Date of this Lease, including, without limitation, liability under any federal, state, or local laws, requirements and regulations, or damage to any of the systems of the Building or the Property. The provisions of this Section 11.8 shall survive the expiration or earlier termination of this Lease."

12. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Lease. The recitals at the beginning of this Amendment are hereby incorporated into this Amendment.

As amended hereby, the Lease is ratified and confirmed in all respects, and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment under seal as of the date first written above.

LANDLORD:

/s/ Rodger P. Nordblom
Rodger P. Nordblom as Trustee
and not individually

/s/ Peter C. Nordblom
Peter C. Nordblom as Trustee
and not individually

TENANT:

LEMAITRE VASCULAR, INC.

By: /s/ Trent G. Kamke
Print Name: Trent G. Kamke
Print Title: Senior VP – Operations
Hereunto duly authorized

**NORTHWEST PARK
LEASE
BY AND BETWEEN
TRUSTEES OF NORTHWEST ASSOCIATES
AND
LEMAITRE VASCULAR, INC.
AT NORTHWEST PARK
BURLINGTON, MASSACHUSETTS**

TABLE OF CONTENTS

TABLE OF CONTENTS

ARTICLE 1 REFERENCE DATA		1
1.1	SUBJECT REFERRED To	1
1.2	EXHIBITS	2
ARTICLE 2 PREMISES AND TERM		3
2.1	PREMISES	3
2.2	TERM	3
ARTICLE 3 IMPROVEMENTS		4
3.1	BASE BUILDING WORK; TENANT IMPROVEMENT WORK	4
3.2	ACCEPTANCE OF THE PREMISES	5
3.3	ALLOWANCE	5
ARTICLE 4 RENT		5
4.1	THE FIXED RENT	5
4.2	ADDITIONAL RENT	5
4.2.1	<i>Real Estate Taxes</i>	5
4.2.2	<i>Personal Property Taxes</i>	6
4.2.3	<i>Operating Costs</i>	6
4.2.4	<i>Insurance</i>	8
4.2.5	<i>Utilities</i>	9
4.3	LATE PAYMENT OF RENT	9
4.4	SECURITY AND RESTORATION DEPOSIT	9
ARTICLE 5 LANDLORD'S COVENANTS		9
5.1	AFFIRMATIVE COVENANTS	9
5.1.1	<i>Heat and Air-Conditioning</i>	9
5.1.2	<i>Electricity</i>	9
5.1.3	<i>Water</i>	9
5.1.4	<i>Fire Alarm</i>	9
5.1.5	<i>Repairs</i>	9
5.2	INTERRUPTION	10
5.3	INTENTIONALLY DELETED	10
5.4	ACCESS	10
5.5	LANDLORD'S INSURANCE	10
5.6	CONDITION OF PREMISES	10
5.7	LANDLORD'S INDEMNIFICATION	10
5.8	ADJACENT USES	10
ARTICLE 6 TENANT'S ADDITIONAL COVENANTS		10
6.1	AFFIRMATIVE COVENANTS	10
6.1.1	<i>Perform Obligations</i>	10
6.1.2	<i>Use</i>	11
6.1.3	<i>Repair and Maintenance</i>	11
6.1.4	<i>Compliance with Law</i>	11
6.1.5	<i>Indemnification</i>	11
6.1.6	<i>Landlord's Right to Enter</i>	11
6.1.7	<i>Personal Property at Tenant's Risk</i>	11
6.1.8	<i>Payment of Landlord's Cost of Enforcement</i>	12
6.1.9	<i>Yield Up</i>	12
6.1.10	<i>Rules and Regulations</i>	12
6.1.11	<i>Estoppel Certificate</i>	12
6.1.12	<i>Landlord's Expenses Re Consents</i>	12
6.2	NEGATIVE COVENANTS	12
6.2.1	<i>Assignment and Subletting</i>	12
6.2.2	<i>Nuisance</i>	13
6.2.3	<i>Intentionally Deleted</i>	13
6.2.4	<i>Floor Load; Heavy Equipment</i>	13
6.2.5	<i>Installation, Alterations or Additions</i>	14
6.2.6	<i>Abandonment</i>	14
6.2.7	<i>Signs</i>	14
6.2.8	<i>Parking and Storage</i>	14
ARTICLE 7 CASUALTY OR TAKING		14

7.1	TERMINATION	14
7.2	RESTORATION	15
7.3	AWARD	15
7.4	DISBURSEMENT OF INSURANCE PROCEEDS	15

ARTICLE 8 DEFAULTS	15	
8.1	EVENTS OF DEFAULT	15
8.2	REMEDIES	15
8.3	REMEDIES CUMULATIVE	16
8.4	LANDLORD’S RIGHT TO CURE DEFAULTS	16
8.5	EFFECT OF WAIVERS OF DEFAULT	16
8.6	NO WAIVER, ETC.	16
8.7	NO ACCORD AND SATISFACTION	16
ARTICLE 9 RIGHTS OF MORTGAGE HOLDERS	16	
9.1	RIGHTS OF MORTGAGE HOLDERS	16
9.2	LEASE SUPERIOR OR SUBORDINATE TO MORTGAGES	17
ARTICLE 10 MISCELLANEOUS PROVISIONS	17	
10.1	NOTICES FROM ONE PARTY TO THE OTHER	17
10.2	QUIET ENJOYMENT	17
10.3	LEASE NOT TO BE RECORDED	17
10.4	LIMITATION OF LANDLORD’S LIABILITY	17
10.5	ACTS OF GOD	17
10.6	LANDLORD’S DEFAULT	17
10.7	BROKERAGE	18
10.8	APPLICABLE LAW AND CONSTRUCTION; MERGER; JURY TRIAL	18
ARTICLE 11 HAZARDOUS MATERIALS	18	
11.1	NO RELEASES OF HAZARDOUS MATERIALS	18
11.2	NOTICES OF RELEASE OF HAZARDOUS MATERIALS	18
11.3	LANDLORD’S RIGHT TO INSPECT	19
11.4	LANDLORD’S RIGHT TO AUDIT	19
11.5	TENANT AUDIT	19
11.6	REMEDIATION	19
11.7	TENANT’S REPORTING REQUIREMENTS; MANAGEMENT AND SAFETY PLAN	19
11.8	INDEMNIFICATION	19
11.9	NOTICE TO TENANT	19
11.10	DELIVERY OF REPORTS	19
11.11	ASBESTOS	19

NORTHWEST PARK

LEASE

ARTICLE 1

Reference Data

1.1 Subject Referred To.

Each reference in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section 1.1.

<i>Date of this Lease:</i>	March 23, 2010
<i>Building:</i>	The single story Building in Northwest Park in Burlington, Massachusetts (hereinafter referred to as the "Park") on a parcel of land known as 53 Second Avenue, a description of which is filed in the Middlesex South Registry of the Land Court as Certificate of Title No. 188423 (the Building and such parcel of land hereinafter being collectively referred to as the "Property").
<i>Premises:</i>	(i) for the period of time from the Commencement Date to the day prior to the Expansion Date (as defined below): A portion of the Building consisting of approximately 16,629 rentable square feet, as shown on Exhibit A attached hereto, and (ii) from and after the Expansion Date, the entire Building consisting of approximately 27,289 rentable square feet.
<i>Rentable Floor Area of Premises:</i>	(i) for the period of time from the Commencement Date to the day prior to the Expansion Date: approximately 16,629 rentable square feet, as shown on Exhibit A, and (ii) from and after the Expansion Date, approximately 27,289 rentable square feet.
<i>Landlord:</i>	Roger P. Nordblom and Peter C. Nordblom, as Trustees of Northwest Associates under Declaration of Trust dated December 9, 1971 and filed in Middlesex South Registry District of the Land Court as Document No. 493351 with Certificate of Title Nos. 136761 and 206553.
<i>Original Notice Address of Landlord:</i>	c/o Nordblom Management Company, Inc. 15 Third Avenue Burlington, Massachusetts 01803
<i>Tenant:</i>	LeMaitre Vascular, Inc.
<i>Original Notice Address of Tenant:</i>	63 Second Avenue Burlington, MA 01803
<i>Commencement Date:</i>	As determined pursuant to Section 2.2
<i>Expansion Date:</i>	The date that is two (2) lease years (as hereinafter defined) and sixth (6) months after the Commencement Date. By way of example only, if the Commencement Date were June 30, 2010, then the Expansion Date would be January 1, 2013.
<i>Expiration Date:</i>	The last day of the seventh (7 th) lease year, it being understood that, as further set forth in Section 2.2 hereof, the term of this Lease shall be co-terminus with Tenant's lease dated March 31, 2003, as amended, for certain premises located at 63 Second Avenue, Burlington, MA (as amended, the "63 Second Ave Lease").
<i>Target Delivery Date:</i>	The date that is one hundred and twenty (120) days after Landlord's receipt of requisite approvals from the Planning Board for the Town of Burlington regarding Landlord's Work (subject to Article 3)
<i>Annual Fixed Rent Rate:</i>	Commencement Date – the day prior to the Expansion Date: \$133,032.00 Expansion Date – Expiration Date: \$218,304.00
<i>Monthly Fixed Rent Rate:</i>	Commencement Date – the day prior to the Expansion Date: \$11,086.00 Expansion Date – Expiration Date: \$18,192.00

<i>Security and Restoration Deposit:</i>	\$50,000.00
<i>Tenant's Percentage:</i>	The ratio of the Rentable Floor Area of the Premises to the total rentable floor area of the Building, which shall (i) for the period of time from the Commencement Date through the day prior to the Expansion Date shall initially be deemed to be Sixty and Ninety-Four One Hundreths percent (60.94%), and (ii) for the period of time from and after the Expansion Date, shall be One Hundred percent (100%).
<i>Initial Estimate of Tenant's Percentage of Taxes for the Tax Year:</i>	\$30,792
<i>Initial Estimate of Tenant's Percentage of Operating Costs for the Calendar Year:</i>	\$45,696
<i>Permitted Uses:</i>	Office, research and development, and light manufacturing
<i>Public Liability Insurance Limits:</i>	
<i>Commercial General Liability:</i>	\$3,000,000 per occurrence \$5,000,000 general aggregate

1.2 Exhibits.

The Exhibits listed below in this section are incorporated in this Lease by reference and are to be construed as a part of this Lease.

EXHIBIT A	Plan showing the Premises.
EXHIBIT B	Commencement Date Notification
EXHIBIT C	Base Building Work
EXHIBIT C-1	Tenant Improvement Work
EXHIBIT D	Work Change Order
EXHIBIT E	Rules and Regulations
EXHIBIT F	Form Tenant Estoppel Certificate
EXHIBIT G	Landlord's Consent and Waiver

ARTICLE 2
Premises and Term

- 2.1 Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Premises, excluding the roof, exterior faces of exterior walls, the common stairways, and pipes, ducts, conduits, wires, and appurtenant fixtures serving exclusively or in common other parts of the Building (and any areas, such as the space above the ceiling or in the walls, that may contain such pipes, ducts, conduits, wires or appurtenant fixtures), and if Tenant's space includes less than entire rentable area of any floor, excluding the central core area of such floor.

Tenant shall have, as appurtenant to the Premises, rights to use in common for the period of time from the Commencement Date until the Expansion Date and exclusively from and after the day prior to the Expansion Date, subject to reasonable rules of general applicability to tenants of the Building from time to time made by Landlord of which Tenant is given notice: (a) the common lobbies, hallways and stairways of the Building, (b) common walkways and driveways necessary for access to the Building, (c) the common parking areas serving the Building, (d) the loading dock serving the Building and (e) if the Premises include less than the entire rentable area of any floor, the common toilets and other common facilities in the central core area of such floor. Tenant shall further have the right to use the space above the suspended ceiling in order for Tenant to install its conduits, cables and pipes, provided said installation is done in compliance with all applicable codes, regulations, ordinances and/or laws and pursuant to the terms and conditions of subsection 6.2.5 of this Lease (it being further agreed by Tenant that said installations shall not constitute "nonstructural, interior installations or alterations" as set forth in subsection 6.2.5 (b)).

There are approximately 94 parking spaces serving the Building. Tenant shall be permitted to use Tenant's Percentage of said available parking. Subject to the actions of and/or directives or orders from governmental and other controlling authorities, and/or the actions of utility companies, Landlord shall not decrease the size of the existing parking area serving the Building.

Landlord reserves the right from time to time, at reasonable times and upon reasonable prior notice to Tenant, except in the case of emergencies, and without unreasonable interference with use of the Premises: (a) to install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building, or either, pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises or Building, (b) to alter or relocate any other common facility, (c) to make any repairs and replacements to the Premises which Landlord may deem necessary, and (d) in connection with any excavation made upon adjacent land of Landlord or others, to enter, and to license others to enter, upon the Premises to do such work as the person causing such excavation deems necessary to preserve the wall of the Building from injury or damage and to support the same. Landlord shall use reasonable efforts to perform the activities permitted under this paragraph during normal business hours, and shall use reasonable efforts not to interfere with Tenant's business operations in the Premises.

- 2.2 Term. TO HAVE AND TO HOLD for a term beginning on the Commencement Date, which shall be the earlier of (a) the date on which Landlord's Work (as defined below) has been substantially completed (or would have been completed, but for a Tenant Delay, as defined below) or (b) the opening by Tenant of its business in the Premises, and ending on the Expiration Date, unless sooner terminated as hereinafter provided. For the purposes hereof, "Tenant Delay" shall be defined as any delay in the completion of Landlord's Work actually caused by (i) special work or long lead-time items for which Landlord identifies a specified period of delay, or change orders made by Tenant for which Landlord identifies a specified period of delay at the time of its approval (and in either instance Tenant does not withdraw or alter such special work, long lead-time item or change order which avoids such delay), (ii) the delay of Tenant in supplying, submitting or approving any plans, specifications or estimates or giving authorizations or supplying information reasonably required by Landlord or its contractors within such reasonable period of time as shall be typically required for the expeditious prosecution of the work to be performed by Landlord, (iii) any contractors employed by Tenant including, without limitation, entities furnishing communications, data processing or other service or equipment directly to Tenant (and not under Landlord's contractor(s)), or (iv) any failure to comply with Article 3 of this Lease or any material interference with the performance of Landlord's Work by Tenant or any of its agents, employees, engineers or contractors

The term "substantially completed" as used herein shall mean that Landlord's Work has been completed with the exception of minor items which can be fully completed without material interference with Tenant and other items which because of the season or weather or the nature of the item are not practicable to do at the time, provided that none of said items is necessary to make the Premises tenantable for the Permitted Uses, and a certificate of occupancy (or temporary certificate of occupancy) for the Premises has been issued. When the dates of the beginning and end of the term have been determined, such dates shall be evidenced by a document, in the form attached hereto as Exhibit B, which Landlord shall complete and deliver to Tenant, and which shall be deemed conclusive unless Tenant shall notify Landlord of any disagreement therewith within ten (10) business days of receipt.

Upon full execution of the Lease, Tenant may, prior to the Commencement Date (but following coordination with Landlord as to the timing), enter the Premises without payment of rent, but otherwise

subject to all the terms and conditions of this Lease, for the purpose of installing Tenant's furniture, fixtures and equipment, as well as performing any installation of wiring and cabling approved of by Landlord pursuant to the terms of this Lease (including but not limited to Section 6.2.5), provided that (i) Tenant shall not interfere with any work then being performed by or for Landlord, (ii) Tenant shall immediately cease its activities in the Premises in the event that Landlord notifies Tenant (which notice may be given orally) that Tenant is interfering with Landlord, and (iii) provided Tenant shall reimburse Landlord for Landlord's actual costs incurred in connection with Tenant's pre-commencement entry and/or work. All such work shall be done in accordance with, and Tenant shall comply with, the provisions of Section 6.2.5 hereof.

The parties agree that this Lease and the 63 Second Ave Lease are co-terminus, and therefore, in the event Tenant terminates the 63 Second Ave Lease pursuant to the terms thereof, Tenant shall have the right to simultaneously terminate this Lease upon written notice to Landlord. Further, in the event that the landlord terminates the 63 Second Ave Lease pursuant to the terms thereof, this Lease shall also be simultaneously terminated by Landlord, such termination to be effective without the necessity of any notice or other documentation; provided, however, that in the event such termination is an exercise of the landlord's rights under Article 7 of the 63 Second Ave Lease, then Tenant may elect, by written notice given within ten (10) business days following Tenant's receipt of Landlord's notice of termination of the 63 Second Ave Lease, to allow this Lease to continue and not be terminated simultaneously with the 63 Second Ave Lease (in which event, following such notice from Tenant, such simultaneous termination of this Lease shall be deemed null and void and the same shall continue pursuant to the terms hereof, recognizing that the term of this Lease will no longer be co-terminus with the 63 Second Ave Lease).

The term "lease year" as used herein shall mean a period of twelve (12) consecutive full calendar months. The first lease year shall begin on the Commencement Date if the Commencement Date is the first day of a calendar month; if not, then the first lease year shall be deemed to commence upon the first day of the calendar month next following the Commencement Date, but shall include the partial month in which the Commencement Date occurred. Each succeeding lease year shall commence upon the anniversary commencement date of the first lease year.

ARTICLE 3

Improvements

3.1 *Base Building Work; Tenant Improvement Work.* A. Landlord shall cause to be performed the base Building work required by Exhibit C (such work, the "Base Building Work"). The Base Building Work shall be done in a good and workmanlike manner employing good materials and so as to conform to all applicable building laws. Tenant agrees that Landlord may make any changes in such work which may become reasonably necessary or advisable, other than substantial changes, without approval of Tenant, provided written notice is promptly given to Tenant; and Landlord may make substantial changes in such work, with the written approval of Tenant, which shall not be unreasonably withheld or delayed.

B. Landlord shall cause to be performed the alterations and improvements desired by Tenant to prepare the Premises for Tenant's use (such work the "TIW") substantially in accordance with Exhibit C-1. The Base Building Work and the TIW are collectively referred to herein as "Landlord's Work." Landlord shall use diligence in pursuing the requisite approval for Landlord's Work from the Planning Board from the Town of Burlington, and following receipt of the same shall use diligence to cause Landlord's Work to be substantially completed by the Target Delivery Date, subject to the provisions of Section 10.5 hereof and Tenant Delays. If Landlord's Work is not substantially complete by the date that is forty-five (45) days after the Target Delivery Date (the "Outside Date"), provided that Landlord's Work does not include long-lead time items, and provided further that such delay is not caused by a Tenant Delay, and subject to Section 10.5 of this Lease, then Tenant shall be entitled to one (1) day of free rent for each day in the period commencing on the Outside Date and continuing until the day before the date on which the Landlord's Work is substantially complete. In addition, if Landlord has not commenced Landlord's Work on or before August 15, 2010 (the "Outside Work Commencement Date"), provided such failure is not caused by a Tenant Delay, and subject to Section 10.5 of this Lease, then Tenant shall be permitted to terminate this Lease upon written notice to Landlord, such notice to be delivered to Landlord no later than five (5) days after the Outside Work Commencement Date and such termination to be effective ten (10) days following the delivery of such notice; provided however, that such termination will be rendered ineffective if, prior to the expiration of said 10-day period, Landlord shall have commenced Landlord's Work. The TIW will be performed at Landlord's expense up to the Initial Allowance (as defined in Section 3.3), with the balance of the cost of the TIW to be paid for as follows: (a) an amount equal to fifty (50%) percent of the anticipated cost of the TIW in excess of the Initial Allowance upon Tenant's execution of this Lease; (b) forty (40%) percent of the anticipated cost of the TIW in excess of the Initial Allowance on the Commencement Date; and (c) the balance of the cost of the TIW in excess of the Initial Allowance upon Landlord's submission of the final bill. The TIW shall be done in a good and workmanlike manner and in compliance with all applicable building laws. Landlord agrees that Tenant may make changes to the TIW with the approval of Landlord and the execution by Landlord and Tenant of a Work Change Order, in the form attached hereto as Exhibit D. Landlord shall use diligence to cause the TIW to be substantially completed by the Delivery Date, subject to the provisions of Section 10.5 hereof and Tenant delays.

C. Landlord shall, subject to site plan approval, at its expense, construct a covered walkway (the "Walkway") connecting the Building to the building located at 63 Second Avenue, Burlington, Massachusetts. Landlord shall construct the Walkway in a good and workmanlike manner, and in compliance with all laws. Landlord shall use diligent efforts to complete the construction of the Walkway

prior to the expiration of calendar year 2010, subject to obtaining all governmental approvals required in connection with the same, and further subject to Section 10.5 of this Lease and any Tenant Delay. Landlord shall be responsible for maintaining and repairing the Walkway, and for the removal of snow and ice from the same, all of the costs of which shall be included as part of Operating Costs.

- 3.2 Acceptance of the Premises. Tenant or its representatives may, at reasonable times, enter upon the Premises during the progress of the work to inspect the progress thereof and to determine if the work is being performed in accordance with the requirements of Section 3.1. Tenant shall promptly give to Landlord notices of any alleged failure by Landlord to comply with those requirements. The Base Building Work and the TIW shall be deemed approved by Tenant when Tenant occupies the Premises for the conduct of its business, except for items of the Base Building Work and the TIW which are uncompleted or do not conform to Exhibit C and as to which Tenant shall, in either case, have given written notice to Landlord prior to such occupancy. A certificate of completion by a licensed architect or registered engineer shall be conclusive evidence that the Base Building Work and TIW have been completed except for items stated in such certificate to be incomplete or not in conformity with Exhibit C. To the extent that Landlord receives any warranties in connection with any portion of Landlord's Work, Tenant shall have the benefit of the same.
- 3.3 Allowances. Landlord shall provide Tenant with an initial allowance of up to \$75,000.00 (the "Initial Allowance") to be used towards the cost of the TIW, and a secondary allowance of \$25,000.00 (the "Secondary Allowance") for further work within the Premises to be undertaken by Tenant pursuant to the terms hereof following the Expansion Date (the "Secondary Work"). When Tenant has incurred costs for the Secondary Work, Tenant shall submit to Landlord from time to time (but no more frequently than monthly) requisitions for payment setting forth any costs incurred for the Secondary Work, together with waivers of lien from all contractors and subcontractors, invoices from contractors, subcontractors and suppliers, and other reasonable documentation evidencing the costs, including fees of architects and engineers, incurred by Tenant for Tenant's Work, to the reasonable satisfaction of Landlord. Landlord shall, within thirty (30) days following Landlord's receipt thereof, pay to Tenant ninety (90%) percent of the amount of each such requisition (or of such lesser amount as is approved by Landlord) with ten (10%) percent to be retained. Such payments, in the aggregate, shall not exceed an amount equal to ninety (90%) percent of the Secondary Allowance. Landlord shall pay to Tenant the ten (10%) percent retained as aforesaid within thirty (30) days following the submission by Tenant of a written statement from Tenant's architect or engineer that Tenant's Work has been completed in accordance with the approved construction plans, a final lien waiver executed by Tenant's general contractor, and a final certificate of occupancy for, and any other required governmental approvals of, Tenant's Work. The costs the Secondary Work shall include all costs incurred by Tenant for construction and installation of improvements (but excluding any trade fixtures or personal property), including the costs of all labor and materials, and all contractor's fees. Tenant shall be responsible for paying for all costs of the Secondary Work not included in the Secondary Allowance and for all costs in excess of the Secondary Allowance. Tenant shall not be entitled to any rent credit or refund for any unused portion of the Initial Allowance and/or the Secondary Allowance.

ARTICLE 4

Rent

- 4.1 The Fixed Rent. Tenant covenants and agrees to pay rent to Landlord at the Original Notice Address of Landlord, or at such other place or to such other person or entity as Landlord may by notice in writing to Tenant from time to time direct), at the Annual Fixed Rent Rate, in equal installments at the Monthly Fixed Rent Rate (which is 1/12th of the Annual Fixed Rent Rate), in advance, without notice or demand, and without setoff, abatement, suspension, deferment, reduction or deduction, except as otherwise expressly provided herein, on the first day of each calendar month included in the term; and for any portion of a calendar month at beginning of the term, at the rate for the first lease year payable in advance for such portion. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Annual Fixed Rent, the Additional Rent and all other sums payable by Tenant to Landlord shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

If Landlord shall give notice to Tenant that all rent and other payments due hereunder are to be made to Landlord by electronic funds transfers, so called, or by similar means, Tenant shall make all such payments as shall be due after receipt of said notice by means of said electronic funds transfers (or such similar means as designated by Landlord), provided, however, that Tenant shall have the right to suspend such electronic funds transfers for just cause for a reasonable period of time, which cause and period of time must be consented to by Landlord (which consent shall not be unreasonably withheld or delayed).

- 4.2 Additional Rent. Tenant covenants and agrees to pay, as Additional Rent, insurance costs, utility charges, personal property taxes and Tenant's Percentage of taxes and operating costs with respect to the Premises as provided in this Section 4.2 as follows:
- 4.2.1 Real Estate Taxes. Tenant shall pay to Landlord, as additional rent, for each tax period partially or wholly included in the term, Tenant's Percentage of Taxes (as hereinafter defined). Tenant shall remit to Landlord, on the first day of each calendar month, estimated payments on account of Taxes, such monthly amounts to be sufficient to provide Landlord, by the time real estate tax

payments are due and payable to any governmental authority responsible for collection of same, a sum equal to the Tenant's Percentage of Taxes, as reasonably estimated by Landlord from time to time on the basis of the most recent tax data available. The initial calculation of the monthly estimated payments shall be based upon the Initial Estimate of Tenant's Percentage of Taxes for the Tax Year and upon quarterly payments being due to the governmental authority on August 1, November 1, February 1 and May 1, and shall be made when the Commencement Date has been determined. If the total of such monthly remittances for any Tax Year is greater than the Tenant's Percentage of Taxes for such Tax year, Landlord shall promptly pay to Tenant, or credit against the next accruing payments to be made by Tenant pursuant to this subsection 4.2.1, the difference; if the total of such remittances is less than the Tenant's Percentage of Taxes for such Tax Year, Tenant shall pay the difference to Landlord at least ten (10) days prior to the date or dates within such Tax Year that any Taxes become due and payable to the governmental authority (but in any event no earlier than ten (10) days following a written notice to Tenant, which notice shall set forth the manner of computation of Tenant's Percentage of Taxes).

If, after Tenant shall have made reimbursement to Landlord pursuant to this subsection 4.2.1, Landlord shall receive a refund of any portion of Taxes paid by Tenant with respect to any Tax Year during the term hereof as a result of an abatement of such Taxes by legal proceedings, settlement or otherwise (without either party having any obligation to undertake any such proceedings), Landlord shall promptly pay to Tenant, or credit against the next accruing payments to be made by Tenant pursuant to this subsection 4.2.1, the Tenant's Percentage of the refund (less the proportional, pro rata expenses, including attorneys' fees and appraisers' fees, incurred in connection with obtaining any such refund), as relates to Taxes paid by Tenant to Landlord with respect to any Tax Year for which such refund is obtained. If Landlord does not pursue a tax abatement during the Tax Year in question, Tenant shall have the right to do so in Landlord's name and Landlord shall reasonably cooperate with Tenant in such effort, provided however, that Tenant shall give prior written notice to Landlord that Tenant elects to seek an abatement and provided, further, that all abatement proceedings are entirely at Tenant's sole cost and expense.

In the event this Lease shall commence, or shall end (by reason of expiration of the term or earlier termination pursuant to the provisions hereof), on any date other than the first or last day of the Tax Year, or should the Tax Year or period of assessment of real estate taxes be changed or be more or less than one (1) year, as the case may be, then the amount of Taxes which may be payable by Tenant as provided in this subsection 4.2.1 shall be appropriately apportioned and adjusted.

The term "Taxes" shall mean all taxes, assessments, betterments and other charges and impositions (including, but not limited to, fire protection service fees and similar charges) levied, assessed or imposed at any time during the term by any governmental authority upon or against the Property, or taxes in lieu thereof, and additional types of taxes to supplement real estate taxes due to legal limits imposed thereon. If, at any time during the term of this Lease, any tax or excise on rents or other taxes, however described, are levied or assessed against Landlord with respect to the rent reserved hereunder, either wholly or partially in substitution for, or in addition to, real estate taxes assessed or levied on the Property, such tax or excise on rents shall be included in Taxes; however, Taxes shall not include franchise, corporation, estate, inheritance, succession, capital levy, transfer, gift, income or excess profits taxes assessed on Landlord, or penalties for delinquent payment of Taxes assessed against Landlord provided such late payment is not caused by or a result of any acts or omissions of Tenant. Taxes shall include any estimated payment made by Landlord on account of a fiscal tax period for which the actual and final amount of taxes for such period has not been determined by the governmental authority as of the date of any such estimated payment.

4.2.2 Personal Property Taxes. Tenant shall pay all taxes charged, assessed or imposed upon the personal property of Tenant in or upon the Premises.

4.2.3 Operating Costs. Tenant shall pay to Landlord the Tenant's Percentage of Operating Costs (as hereinafter defined) incurred by Landlord in any calendar year. Tenant shall remit to Landlord, on the first day of each calendar month, estimated payments on account of Operating Costs, such monthly amounts to be sufficient to provide Landlord, by the end of the calendar year, a sum equal to the Operating Costs, as reasonably estimated by Landlord from time to time. The initial monthly estimated payments shall be in an amount equal to 1/12th of the Initial Estimate of Tenant's Percentage of Operating Costs for the Calendar Year. If, at the expiration of the year in respect of which monthly installments of Operating Costs shall have been made as aforesaid, the total of such monthly remittances is greater than the actual Operating Costs for such year, Landlord shall promptly pay to Tenant, or credit against the next accruing payments to be made by Tenant pursuant to this subsection 4.2.3, the difference; if the total of such remittances is less than the Operating Costs for such year, Tenant shall pay the difference to Landlord within twenty (20) days from the date Landlord shall furnish to Tenant an itemized statement of the Operating Costs, prepared, allocated and computed in accordance with generally accepted accounting principles. Any reimbursement for Operating Costs due and payable by Tenant with respect to periods of less than twelve (12) months shall be equitably prorated.

The term "Operating Costs" shall mean all costs and expenses incurred for the operation, maintenance, repair, upkeep and exterior cleaning of the Property, and the portion of such costs

and expenses with regard to the common areas, facilities and amenities of the Park which is equitably allocable to the Property, including, without limitation, all costs of maintaining and repairing the Property and the Park (including snow removal, landscaping and grounds maintenance, operation and maintenance of parking lots, sidewalks, walking paths, access roads and driveways, security, operation and repair of heating and air-conditioning equipment, elevators, lighting and any other Building equipment or systems) and of all repairs and replacements (other than repairs or replacements for which Landlord has received full reimbursement from contractors, other tenants of the Building or from others) necessary to keep the Property and the Park in good working order, repair, appearance and condition; all costs, including material and equipment costs, for cleaning the exterior of the Building (including without limitation window cleaning of the Building); all costs of any reasonable insurance carried by Landlord relating to the Property; all costs related to provision of heat (including oil, electric, steam and/or gas), air-conditioning, and water (including sewer charges) and other utilities to the Building (exclusive of reimbursement to Landlord for any of same received as a result of direct billing to any tenant of the Building); payments under all service contracts relating to the foregoing; all compensation, fringe benefits, payroll taxes and workmen's compensation insurance premiums related thereto with respect to any employees of Landlord or its affiliates engaged in security and maintenance of the Property and the Park; attorneys' fees and disbursements (exclusive of any such fees and disbursements incurred in tax abatement proceedings or the preparation of leases) and auditing and other professional fees and expenses; and a management fee.

There shall not be included in such Operating Costs: (a) brokerage fees (including rental fees) related to the operation of the Building; (b) interest and depreciation charges incurred on the Property; (c) expenditures made by Tenant with respect to (i) janitorial type cleaning, maintenance and upkeep of the interior of the Premises (provided said janitorial and cleaning services are not being provided by Landlord), and (ii) the provision of electricity to the Premises; (d) the cost of any item for which Landlord is reimbursed by insurance proceeds; (e) payments which exceed arm-length competitive market prices for services rendered to the Premises paid to any person, firm or corporation affiliated with Landlord to the extent that the payments for such services exceed the competitive costs that would have been paid to parties unaffiliated with Landlord; (f) costs incurred by Landlord due to a breach by Landlord of the terms and conditions of this Lease but only to the extent such costs do not arise from or are attributable to the acts or omissions of Tenant; (g) costs of correcting defects in the original construction of the Premises; (h) costs resulting from the gross negligence or willful misconduct of Landlord or Landlord's agents; (i) legal fees incurred in tenant disputes, including litigation and arbitration, to the extent said fees are not related to the operation and/or maintenance of the Building, and/or are not related to the relationship (contractual or otherwise) which exists or may exist between Landlord and Tenant; and (j) costs or expenses related to the removal, abatement or remediation of hazardous materials in or about the Building and/or the Property which is existing as of the date hereof, to the extent said costs or expenses are not attributable to or arise from the acts or omission of Tenant or Tenant's agents, employees, invitees, servants or contractors (which costs and expenses shall be paid for by Tenant).

If, during the term of this Lease, Landlord shall replace any capital items or make any capital expenditures (collectively called "capital expenditures") the total amount of which is not properly included in Operating Costs for the calendar year in which they were made, there shall nevertheless be included in Operating Costs for each calendar year in which and after such capital expenditure is made the annual charge-off of such capital expenditure. (Annual charge-off shall be determined by (i) dividing the original cost of the capital expenditure by the number of years of useful life thereof [The useful life shall be reasonably determined by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item.]; and (ii) adding to such quotient an interest factor computed on the unamortized balance of such capital expenditure based upon an interest rate reasonably determined by Landlord as being the interest rate then being charged for long-term mortgages by institutional lenders on like properties within the locality in which the Building is located.) Provided, further, that if Landlord reasonably concludes on the basis of engineering estimates that a particular capital expenditure will effect savings in Operating Costs and that such annual projected savings to Operating Costs will exceed the annual charge-off of capital expenditure computed as aforesaid, then and in such events, if Landlord shall make such capital expenditure, the annual charge-off shall be determined by dividing the amount of such capital expenditure by the number of years over which the projected amount of such savings shall fully amortize the cost of such capital item or the amount of such capital expenditure; and by adding the interest factor, as aforesaid.

If during any portion of any year for which Operating Costs are being computed, the Building was not fully occupied by tenants or if not all of such tenants were paying fixed rent or if Landlord was not supplying all tenants with the services being supplied hereunder, the variable components of actual Operating Costs incurred shall be reasonably extrapolated by Landlord to the estimated Operating Costs that would have been incurred if the Building were fully occupied by tenants and all such tenants were then paying fixed rent or if such services were being supplied to all tenants, and such extrapolated amount shall, for the purposes of this Section 4.2.3, be deemed to be the Operating Costs for such year.

Tenant and its representatives, at Tenant's sole expense, shall have the right, during customary business hours, to inspect at Landlord's offices, Landlord's books and records relating to Operating Costs for the immediately preceding calendar year. As a condition to performing any such inspection, Tenant and its examiners shall be required to execute and deliver to Landlord an agreement, in form reasonably acceptable to Landlord, agreeing to keep confidential any information which Tenant and the examining party discovers in connection with such examination, except for disclosures required by law, court order or regulatory authorities, or to Tenant's attorneys, accountants, auditors, or potential purchasers of the Tenant company. If Tenant elects to exercise such right, it must provide reasonable prior written notice to Landlord given no later than one hundred and twenty (120) days following Tenant's receipt of Landlord's Statement of Operating Costs for any calendar year and it must complete any such inspection within 60 days of commencement. Landlord agrees to reasonably cooperate with Tenant to enable Tenant to complete its inspection within the time period specified in the preceding sentence. Tenant shall give Landlord a complete copy of the results of its inspection. If it is determined that Tenant is entitled to a refund, then such refund shall either be in cash or applied as a credit to the next due installment of Rent, at the election of Landlord. If it is determined Tenant has underpaid, then Tenant shall pay such amount within thirty (30) days of Landlord's invoice therefor. Tenant agrees to use for such inspection a firm that is reasonably acceptable to Landlord and that is not being paid on a contingency fee basis. If Tenant's audit demonstrates, to Landlord's reasonable satisfaction, that Operating Costs were overstated by more than five percent (5%), then Landlord shall reimburse Tenant the reasonable cost of the audit (it being agreed that if Tenant's audit does not show such overstatement, Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord in connection with such audit).

4.2.4 Insurance. Tenant shall, at its expense, as Additional Rent, take out and maintain throughout the term the following insurance protecting Landlord:

- 4.2.4.1 Commercial general liability insurance naming Landlord, Tenant, and Landlord's managing agent and any mortgagee of which Tenant has been given notice as insureds or additional insureds and indemnifying the parties so named against all claims and demands for death or any injury to person or damage to property which may be claimed to have occurred on the Premises (or the Property, insofar as used by customers, employees, servants or invitees of the Tenant), in amounts which shall, at the beginning of the term, be at least equal to the limits set forth in Section 1.1, and, which, from time to time during the term, shall be for such higher limits, if any, as are customarily carried in the area in which the Premises are located on property similar to the Premises and used for similar purposes; and workmen's compensation insurance with statutory limits covering all of Tenant's employees working on the Premises.
- 4.2.4.2 Special Risk property insurance with the usual extended coverage endorsements covering all Tenant's furniture, furnishings, fixtures and equipment, and business interruption insurance, with extra expense coverage.
- 4.2.4.3 All such policies shall be obtained from responsible companies qualified to do business and in good standing in Massachusetts, which companies and the amount of insurance allocated thereto shall be subject to Landlord's approval. Tenant agrees to furnish Landlord with certificates evidencing all such insurance prior to the beginning of the term hereof and evidencing renewal thereof at least thirty (30) days prior to the expiration of any such policy. Each such policy shall be non-cancelable with respect to the interest of Landlord without at least ten (10) days' prior written notice thereto. In the event provision for any such insurance is to be by a blanket insurance policy, the policy shall allocate a specific and sufficient amount of coverage to the Premises.
- 4.2.4.4 All insurance which is carried by either party with respect to the Building, Premises or to furniture, furnishings, fixtures, or equipment therein or alterations or improvements thereto, whether or not required, shall include provisions which either designate the other party as one of the insured or deny to the insurer acquisition by subrogation of rights of recovery against the other party to the extent such rights have been waived by the insured party prior to occurrence of loss or injury, insofar as, and to the extent that, such provisions may be effective without making it impossible to obtain insurance coverage from responsible companies qualified to do business in the state in which the Premises are located (even though extra premium may result therefrom). In the event that extra premium is payable by either party as a result of this provision, the other party shall reimburse the party paying such premium the amount of such extra premium. If at the request of one party, this non-subrogation provision is waived, then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective, but nothing contained in this subsection shall derogate from or otherwise affect releases elsewhere herein contained of either party for claims. Each party shall be entitled to have certificates of any policies containing such provisions. Each party hereby waives all rights of recovery against the other for loss or injury against which the waiving party is protected by insurance containing said provisions, reserving, however, any rights with respect to any excess of loss or injury over the amount recovered by such insurance. Tenant shall not acquire as insured under any insurance carried on the Premises any right to participate in the adjustment of loss or to receive insurance proceeds and agrees upon request promptly to endorse and deliver to Landlord any checks or other instruments in payment of loss in which Tenant is named as payee.

4.2.5 Utilities. Tenant shall pay all charges made by public authority or utility for the cost of gas and electricity furnished or consumed on the Premises, all charges for any utilities supplied by Landlord pursuant to Subsections 5.1.1 and 5.1.3 which are separately metered, and all charges for telephone and other utilities or services not supplied by Landlord pursuant to Subsections 5.1.1 and 5.1.3, whether designated as a charge, tax, assessment, fee or otherwise, all such charges to be paid as the same from time to time become due. Except as otherwise provided in Article 5, it is understood and agreed that Tenant shall make its own arrangements for the installation or provision of all such utilities and that Landlord shall be under no obligation to furnish any utilities to the Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Premises.

4.3 Late Payment of Rent. If any installment of rent is paid after the date the same was due, and if on a prior occasion in the twelve (12) month period prior to the date such installment was due an installment of rent was paid after the same was due, then Tenant shall pay Landlord a late payment fee equal to five (5%) percent of the overdue payment.

4.4 Security and Restoration Deposit. Currently, Landlord is in possession of a Security and Restoration Deposit in the amount of \$100,000.00 under the 63 Second Ave Lease. Pursuant to an amendment to the 63 Second Ave Lease being executed concurrently herewith, the parties agree that Landlord shall transfer \$50,000.00 of the Security and Restoration Deposit currently being held under the 63 Second Ave Lease for Tenant's account under this Lease, such that said amount shall be the Security and Restoration Deposit required under Section 1.1 of this Lease. Said deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms of this Lease by said Tenant to be observed and performed. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord.

If the Fixed Rent or Additional Rent or any other sum payable hereunder shall be overdue and unpaid or should Landlord make payments on behalf of the Tenant, or Tenant shall fail to perform any of the terms of this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire deposit or so much thereof as may be necessary to compensate Landlord toward the payment of Fixed Rent, Additional Rent or other sums or loss or damage sustained by Landlord due to such breach on the part of Tenant; and Tenant shall forthwith upon demand restore said security to the original sum deposited. Within forty-five (45) days following Tenant's yield-up of the Premises in accordance with the terms hereof, Landlord shall refund to Tenant said deposit, or so much thereof as may remain after application toward any satisfaction of any obligation of Tenant.

In the event of bankruptcy or other creditor-debtor proceedings against Tenant, all securities shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to the filing of such proceedings.

ARTICLE 5

Landlord's Covenants

5.1 Affirmative Covenants. Landlord covenants with Tenant:

5.1.1 Heat and Air-Conditioning. To furnish to the Premises heat, ventilation and air-conditioning ("HVAC"), reserving the right, at any time, to change energy or heat sources, sufficient to maintain the Premises at comfortable temperatures (subject to all federal, state, and local regulations relating to the provision of heat), during such hours of the day and days of the year as Tenant determines. The electricity and gas required for the HVAC for the Premises shall be as provided for, below. Tenant shall have direct control over the HVAC system serving the Premises.

5.1.2 Electricity and Gas. To furnish to the Premises, separately metered and at the direct expense of Tenant as hereinabove provided, reasonable electricity as specified in Exhibit C for Tenant's Permitted Uses. To furnish gas for use the HVAC system, which, prior to the Expansion Date, be billed to Tenant as part of Operating Costs, and from and after the Expansion Date shall be separately metered and at Tenant's direct expense.

5.1.3 Water. To furnish water for ordinary cleaning, lavatory and toilet facilities, and otherwise as shown in the plans for Landlord's Work.

5.1.4 Fire Alarm. To maintain fire alarm and sprinkler systems within the Building.

5.1.5 Repairs. Except as otherwise expressly provided herein, to make such repairs and replacements to the roof, exterior walls, floor slabs and other structural components of the Building, and to the common areas, facilities and plumbing, electrical, heating, ventilating and air-conditioning systems of the Building as may be necessary to keep them in good repair and condition (exclusive of equipment installed by Tenant and except for those repairs required to be made by Tenant pursuant to Section 6.1.3 hereof and repairs or replacements occasioned by any act or negligence of Tenant, its servants, agents, customers, contractors, employees, invitees, or licensees).

-
- 5.2 Interruption. Landlord shall be under no responsibility or liability for failure or interruption of any of the above-described services, repairs or replacements caused by breakage and accidents beyond the control of Landlord, strikes, repairs beyond the control of Landlord, inability to obtain supplies, labor or materials, or for any other causes beyond the control of the Landlord, and in no event for any indirect or consequential damages to Tenant; and failure or omission on the part of the Landlord to furnish any of same for any of the reasons set forth in this paragraph shall not be construed as an eviction of Tenant, actual or constructive, nor entitle Tenant to an abatement of rent, nor render the Landlord liable in damages, nor release Tenant from prompt fulfillment of any of its covenants under this Lease. Notwithstanding the foregoing, if Landlord fails to provide any service that it is required to provide above so that Tenant's ability to conduct business at the Premises is materially adversely affected for a period of five (5) consecutive business days after written notice thereof from Tenant to Landlord, then, provided that such failure or Landlord's inability to cure such condition is not (i) due to a cause beyond Landlord's reasonable control and/or (ii) generally affecting other buildings in the vicinity of the Premises (such as a neighborhood power outage or a water main break) or a fire or other casualty or taking (which shall be governed by Article 7 below) or the fault or negligence of Tenant or any of its agents, employees or contractors, then as Tenant's sole remedy the Fixed Rent and Additional Rent shall be equitably abated based upon the impact thereof on Tenant's ability to conduct business in the Premises until such service(s) is restored to their level prior to the interruption.
- 5.3 Intentionally Deleted.
- 5.4 Access. Tenant shall have access to the Premises at all times.
- 5.5 Landlord's Insurance. Landlord shall take out and maintain throughout the term (i) all-risk casualty insurance in an amount equal to 100% of the replacement cost of the Building, including Landlord's Work, but specifically excluding any other improvements installed by Tenant during the term, and (ii) comprehensive general liability insurance with respect to the Property in commercially reasonable amounts. Landlord shall not be required to carry insurance of any kind on any improvements in the Premises other than Landlord's Work.
- 5.6 Condition of Premises. As of the date of this Lease, Landlord represents and warrants that (i) the Building is in compliance with the applicable local building code but makes no representation or warranty as to whether the Building is in compliance with the Americans With Disabilities Act; and (ii) the heating, ventilation and air conditioning system and other mechanical systems serving the Building will be in serviceable working order as of the Commencement Date.
- 5.7 Landlord's Indemnification. Landlord shall indemnify, defend and save Tenant harmless from and against all claims brought by, liability imposed by, or loss or damage arising from the actions of (including the cost of any cleanup or remediation) a governmental authority having jurisdiction over the Property and/or the Park caused by a release or threat of release of Hazardous Materials (as defined in Section 11.1 below) from or at the Property and/or the Park prior to the Commencement Date or, if after the Commencement Date, to the extent caused by Landlord's use, handling, holding, transporting, storage or disposal of Hazardous Materials including, without limitation, liability under any federal, state or local laws, requirements and regulations; provided, however, that this indemnity shall not apply to the extent such claim, liability, loss and/or damage is attributable or pertains to the following: (i) in the event (but only in the event) Tenant uses, stores, handles, holds, transports or disposes at, on or under the Property the Hazardous Materials which are the subject of such claim, liability, loss and/or damage, unless Tenant provides evidence reasonably satisfactory to Landlord that the Hazardous Materials which are the subject of such claim, liability, loss and/or damage are not caused by or attributable in whole or in part to Tenant, (ii) in the event Tenant or its agents, employees or contractors causes or contributes to the release or threat of release of Hazardous Materials, or (iii) to any claim brought or liability imposed under any law, regulation or ordinance, or common law, arising out of any personal injury or damage suffered or alleged to have been suffered by Tenant's employees, agents, invitees or contractors. The provisions of this Section 5.7 shall survive the expiration or earlier termination of this Lease.
- 5.8 Adjacent Uses. Landlord shall not knowingly lease the vacant space in the Building adjacent to the Premises leased by Tenant during the period of time from the Commencement Date through the day prior to the Expansion Date to another tenant who actively uses and stores Hazardous Materials as a primary component of such tenant's business operation, excluding, however, Hazardous Materials used or stored in connection with general office purposes (for example, and by way of example only, customary office and cleaning supplies, or the toner and other fluids in a printing or facsimile machine).

ARTICLE 6
Tenant's Additional Covenants

- 6.1 Affirmative Covenants. Tenant covenants at all times during the term and for such further time (prior or subsequent thereto) as Tenant occupies the Premises or any part thereof:
- 6.1.1 Perform Obligations. To perform promptly all of the obligations of Tenant set forth in this Lease; and to pay when due the Fixed Rent and Additional Rent and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant.

-
- 6.1.2 Use. To use the Premises only for the Permitted Uses, and from time to time to procure all licenses and permits necessary therefor, at Tenant's sole expense. Notwithstanding the foregoing, Landlord shall be responsible for obtaining the initial Certificate of Occupancy in connection with Landlord's Work. With respect to any licenses or permits relating to or affecting the Property for which Tenant may apply, pursuant to this subsection 6.1.2 or any other provision hereof, Tenant shall furnish Landlord copies of applications therefor on or before their submission to the governmental authority.
- 6.1.3 Repair and Maintenance. To maintain the Premises in neat order and condition and to perform all routine and ordinary repairs to the Premises and to any plumbing, heating, electrical, ventilating and air-conditioning systems located within the Premises and installed by Tenant such as are necessary to keep them in good working order, appearance and condition, as the case may require, reasonable use and wear thereof and damage by fire or by unavoidable casualty only excepted; to keep all glass in windows and doors of the Premises (except glass in the exterior walls of the Building) whole and in good condition with glass of the same quality as that injured or broken; and to make as and when needed as a result of misuse by, or neglect or improper conduct of Tenant or Tenant's servants, employees, agents, invitees or licensees or otherwise, all repairs necessary, which repairs and replacements shall be in quality and class equal to the original work. (Landlord, upon default of Tenant hereunder and upon prior notice to Tenant, may elect, at the expense of Tenant, to perform all such cleaning and maintenance and to make any such repairs or to repair any damage or injury to the Building or the Premises caused by moving property of Tenant in or out of the Building, or by installation or removal of furniture or other property, or by misuse by, or neglect, or improper conduct of, Tenant or Tenant's servants, employees, agents, contractors, customers, patrons, invitees, or licensees.)
- 6.1.4 Compliance with Law. To make all repairs, alterations, additions or replacements to the Premises required by any law or ordinance or any order or regulation of any public authority; to keep the Premises equipped with all safety appliances so required; and to comply with the orders and regulations of all governmental authorities with respect to zoning, building, fire, health and other codes, regulations, ordinances or laws applicable to the Premises, except that Tenant may defer compliance so long as the validity of any such law, ordinance, order or regulations shall be contested by Tenant in good faith and by appropriate legal proceedings, if Tenant first gives Landlord appropriate assurance or security against any loss, cost or expense on account thereof.
- 6.1.5 Indemnification. To save harmless, exonerate and indemnify Landlord, its agents (including, without limitation, Landlord's managing agent) and employees (such agents and employees being referred to collectively as the "Landlord Related Parties") from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Premises and the Property to the extent arising out of the use or occupancy of the Premises by Tenant or by any person claiming by, through or under Tenant (including, without limitation, all patrons, employees and customers of Tenant), or arising out of any delivery to or service supplied to the Premises requested by or on account of Tenant, or on account of or based upon anything whatsoever done on the Premises, except to the extent the same was caused by the gross negligence, fault or misconduct of Landlord or the Landlord Related Parties. In respect of all of the foregoing, Tenant shall indemnify Landlord and the Landlord Related Parties from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against Landlord or the Landlord Related Parties by reason of any such claim, Tenant, upon notice from Landlord and at Tenant's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Landlord. Landlord shall not settle any such claim without first consulting with Tenant and obtaining the consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed.
- 6.1.6 Landlord's Right to Enter. Upon reasonable prior notice from Landlord (except in emergencies), to permit Landlord and its agents to enter into and examine the Premises at reasonable times and to show the Premises (other than to prospective tenants, except as otherwise set forth in this Section 6.1.6), and to make repairs to the Premises, and, during the last six (6) months prior to the expiration of this Lease, to show the Premises to prospective tenants and to keep affixed in suitable places notices of availability of the Premises. Landlord shall use reasonable efforts to perform such showings during normal business hours.
- 6.1.7 Personal Property at Tenant's Risk. All of the furnishings, fixtures, equipment, effects and property of every kind, nature and description of Tenant and of all persons claiming by, through or under Tenant which, during the continuance of this Lease or any occupancy of the Premises by Tenant or anyone claiming under Tenant, may be on the Premises, shall be at the sole risk and hazard of Tenant and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or to be borne by Landlord, except that Landlord shall in no event be indemnified or held harmless or exonerated from any liability to Tenant or to any other person, for any injury, loss, damage or liability to the extent prohibited by law.

6.1.8 Payment of Landlord's Cost of Enforcement. To pay on demand Landlord's expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of Tenant under this Lease or in curing any default by Tenant under this Lease as provided in Section 8.4.

6.1.9 Yield Up. At the expiration of the term or earlier termination of this Lease: to surrender all keys to the Premises; to remove all of its trade fixtures and personal property in the Premises; to deliver to Landlord stamped architectural plans showing the Premises at yield up (which may be the initial plans if Tenant has made no installations after the Commencement Date); to remove such installations made by it as Landlord may request (including computer and telecommunications wiring and cabling, it being understood that if Tenant leaves such wiring and cabling in a useable condition, Landlord, although having the right to request removal thereof, is less likely to so request) and all Tenant's signs wherever located; to repair all damage caused by such removal and to yield up the Premises (including all installations and improvements made by Tenant except for trade fixtures and such of said installations or improvements as Landlord shall request Tenant to remove), broom-clean and in the same good order and repair in which Tenant is obliged to keep and maintain the Premises by the provisions of this Lease, loss by fire or other casualty excepted. Any property not so removed shall be deemed abandoned and, if Landlord so elects, deemed to be Landlord's property, and may be retained or removed and disposed of by Landlord in such manner as Landlord shall determine and Tenant shall pay Landlord the entire cost and expense incurred by it in effecting such removal and disposition and in making any incidental repairs and replacements to the Premises and for use and occupancy during the period after the expiration of the term and prior to its performance of its obligations under this subsection 6.1.9. Tenant shall further indemnify Landlord against all loss, cost and damage resulting from Tenant's failure and delay in surrendering the Premises as above provided. Tenant shall not be required to remove any of Landlord's Work, but Tenant may, at its option and with at least thirty (30) days prior notice to Landlord, remove any of the fixtures, property or equipment that are a part of the TIW provided that, following such removal, Tenant repairs all damage caused by removal and the portion of the Premises from which such item was removed is left in a fully functional condition.

If the Tenant remains in the Premises beyond the expiration or earlier termination of this Lease, such holding over shall be without right and shall not be deemed to create any tenancy, but the Tenant shall be a tenant at sufferance only at a daily rate of rent equal to two (2) times the rent and other charges in effect under this Lease as of the day prior to the date of expiration of this Lease.

6.1.10 Rules and Regulations. To comply with the Rules and Regulations set forth in Exhibit E, and with all reasonable Rules and Regulations of general applicability to all tenants of the Building hereafter made by Landlord, of which Tenant has been given notice; Landlord shall not be liable to Tenant for the failure of other tenants of the Building to conform to such Rules and Regulations.

6.1.11 Estoppel Certificate. Upon not less than ten (10) business days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing, which may be in the form attached hereto as Exhibit F or in another form reasonably similar thereto, or such other form as Landlord may provide from time to time, certifying, to the extent true and accurate, all or any of the following: (i) that this Lease is unmodified and in full force and effect, (ii) whether the term has commenced and Fixed Rent and Additional Rent have become payable hereunder and, if so, the dates to which they have been paid, (iii) whether or not Landlord is in default in performance of any of the terms of this Lease, (iv) whether Tenant has accepted possession of the Premises, (v) whether Tenant has made any claim against Landlord under this Lease and, if so, the nature thereof and the dollar amount, if any, of such claim, (vi) whether there exist any offsets or defenses against enforcement of any of the terms of this Lease upon the part of Tenant to be performed, and (vii) such further information with respect to the Lease or the Premises as Landlord may reasonably request. Any such statement delivered pursuant to this subsection 6.1.11 may be relied upon by any prospective purchaser or mortgagee of the Premises, or any prospective assignee of such mortgage. Tenant shall also deliver to Landlord such financial information as may be reasonably required by Landlord to be provided to any mortgagee or prospective purchaser of the Premises, provided such mortgagee or prospective purchaser first executes a non-disclosure agreement with Tenant reasonably acceptable to Tenant.

6.1.12 Landlord's Expenses Re Consents. To reimburse Landlord promptly on demand for all reasonable legal expenses incurred by Landlord in connection with all requests by Tenant for consent or approval hereunder. The foregoing shall not apply to consents sought from Landlord in connection with Landlord's Work.

6.2 Negative Covenants. Tenant covenants at all times during the term and such further time (prior or subsequent thereto) as Tenant occupies the Premises or any part thereof:

6.2.1 Assignment and Subletting. Not to assign, transfer, mortgage or pledge this Lease or to sublease (which term shall be deemed to include the granting of concessions and licenses and the like) all or any part of the Premises or suffer or permit this Lease or the leasehold estate hereby created or any other rights arising under this Lease to be assigned, transferred or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of law, or permit the occupancy of the Premises by anyone other than Tenant without the prior written consent of Landlord. In the event Tenant desires to assign this Lease or sublet any portion or all of the Premises, Tenant shall notify Landlord in writing of Tenant's intent to so assign this Lease or sublet the Premises and the

proposed effective date of such subletting or assignment, and shall request in such notification that Landlord consent thereto. Landlord may terminate this Lease in the case of a proposed assignment, or suspend this Lease pro tanto for the period and with respect to the space involved in the case of a proposed subletting, by giving written notice of termination or suspension to Tenant, with such termination or suspension to be effective as of the effective date of such assignment or subletting. If Landlord does not so terminate or suspend, Landlord's consent shall not be unreasonably withheld, conditioned or delayed to an assignment or to a subletting, provided that the following conditions are met:

- (i) the assignee or subtenant shall use the Premises only for the Permitted Uses;
- (ii) the proposed assignee or subtenant has a net worth and creditworthiness reasonably acceptable to Landlord; and
- (iii) the proposed assignee or subtenant is not then a tenant in the Building or the Park, or an entity with which Landlord is negotiating or has negotiated within the preceding six months regarding the possibility of leasing space in the Building or the Park.

Tenant shall furnish Landlord with any information reasonably requested by Landlord to enable Landlord to determine whether the proposed assignment or subletting complies with the foregoing requirements, including without limitation, financial statements relating to the proposed assignee or subtenant.

Tenant shall, as Additional Rent, reimburse Landlord promptly for Landlord's reasonable legal expenses incurred in connection with any request by Tenant for such consent. If Landlord consents thereto, no such subletting or assignment shall in any way impair the continuing primary liability of Tenant hereunder, and no consent to any subletting or assignment in a particular instance shall be deemed to be a waiver of the obligation to obtain the Landlord's written approval in the case of any other subletting or assignment.

If for any assignment or sublease consented to by Landlord hereunder Tenant receives rent or other consideration, either initially or over the term of the assignment or sublease, in excess of the rent called for hereunder, or in case of sublease of part, in excess of such rent fairly allocable to the part, after appropriate adjustments to assure that all other payments called for hereunder are appropriately taken into account and after deduction for reasonable marketing expenses of Tenant in connection with the assignment or sublease, to pay to Landlord as additional rent fifty (50%) percent of the excess of each such payment of rent or other consideration received by Tenant promptly after its receipt.

If at any time during the term of this Lease, there is a name change, reformation or reorganization of the Tenant entity, Tenant shall so notify Landlord and deliver evidence reasonably satisfactory to Landlord documenting such name change, reformation or reorganization.

Notwithstanding the foregoing provisions of Subsection 6.2.1, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent, to any corporation which controls or is controlled by Tenant, or to any corporation into which or with which Tenant is merged or consolidated, or to any corporation which purchases all or substantially all of the assets of Tenant's business, or to any corporation resulting from another form of corporate reorganization, provided that (a) the assignee or sublessee agrees to assume and perform, in full, the obligations of Tenant under this Lease by written instrument reasonably satisfactory to Landlord (which instrument shall be delivered to Landlord fifteen (15) days prior to the effective date of any such transaction), (b) Tenant remains fully and primarily liable under this Lease, (c) the use of the Premises remains unchanged, and (d) the successor to Tenant will have on the effective date of the assignment or sublease a net worth at least equal to or greater than the net worth that Tenant had immediately prior to the merger, consolidation, acquisition, transfer or transaction permitted herein, and provided further that proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least fifteen (15) days prior to the effective date of any such transaction.

6.2.2 Nuisance. Not to injure, deface or otherwise harm the Premises; nor commit any nuisance; nor permit in the Premises any vending machine (except such as is used for the sale of merchandise to employees of Tenant) or inflammable fluids or chemicals (except such as are customarily used in connection with standard office equipment); nor permit any cooking to such extent as requires special exhaust venting; nor permit the emission of any objectionable noise or odor; nor make, allow or suffer any waste; nor make any use of the Premises which is improper, offensive or contrary to any law or ordinance or which will invalidate any of Landlord's insurance; nor conduct any auction, fire, "going out of business" or bankruptcy sales.

6.2.3 Intentionally Deleted.

6.2.4 Floor Load: Heavy Equipment. Not to place a load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry and which is allowed by law. Business machines and mechanical equipment which cause vibration or noise shall be placed and maintained by Tenant at Tenant's expense in settings sufficient to absorb and prevent vibration, noise and annoyance.

6.2.5 Installation, Alterations or Additions. Not to make any installations, alterations or additions in, to or on the Premises nor to permit the making of any holes in the walls, partitions, ceilings or floors nor the installation or modification of any locks or security devices without on each occasion obtaining the prior written consent of Landlord, and then only pursuant to plans and specifications approved by Landlord in advance in each instance. Notwithstanding the foregoing, Tenant may, without the prior consent of Landlord, (a) paint and carpet the Premises and (b) make such other nonstructural, interior installations or alterations not exceeding \$5,000.00 in cost in the aggregate during any lease year, providing the same do not reduce the value of the Property or impair the structural integrity of the Building or the systems, mechanical or otherwise, serving the same, or involve penetrations of the ceiling grid (or removal of the same), roof or exterior walls, and further provided that Tenant shall furnish Landlord with as built plans upon completion of such work. Tenant shall pay promptly when due the entire cost of any work to the Premises undertaken by Tenant so that the Premises shall at all times be free of liens for labor and materials, and at Landlord's request Tenant shall furnish to Landlord a bond or other security acceptable to Landlord assuring that any work commenced by Tenant will be completed in accordance with the plans and specifications theretofore approved by Landlord and assuring that the Premises will remain free of any mechanics' lien or other encumbrance arising out of such work. In any event, Tenant shall forthwith bond against or discharge any mechanics' liens or other encumbrances that may arise out of such work. Tenant shall procure all necessary licenses and permits at Tenant's sole expense before undertaking such work. All such work shall be done in a good and workmanlike manner employing materials of good quality and so as to conform with all applicable zoning, building, fire, health and other codes, regulations, ordinances and laws. Tenant shall save Landlord harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or growing out of such work.

Not to grant a security interest in, or to lease, any personal property or equipment being installed in the Premises, including, without limitation, demountable partitions (the "Collateral") without first obtaining an agreement for the benefit of Landlord in the form attached hereto as Exhibit G, from the secured party or lessor ("Secured Party") that stipulates in the event either the Lease is terminated or Tenant defaults in its obligations to Secured Party, then (i) Secured Party will remove the Collateral within ten (10) business days after notice from Landlord of the expiration or earlier termination of this Lease, or within ten (10) business days after Secured Party notifies Landlord that Secured Party has the right to remove the Collateral on account of Tenant's default in its obligations to Secured Party, (ii) Secured Party will restore the area affected by such removal, and (iii) that a failure to so remove the Collateral will subject such property to the provisions of subsection 6.1.9 of the Lease.

6.2.6 Abandonment. Not to abandon the Premises during the term.

6.2.7 Signs. Not without Landlord's prior written approval to paint or place any signs or place any curtains, blinds, shades, awnings, aerials, or the like, visible from outside the Premises. Notwithstanding the foregoing, Tenant shall be permitted to place an identification sign on the Building at Tenant's expense, in conformance with Northwest Park's sign policy and all applicable laws, ordinances and regulations and subject to Landlord's prior approval (which shall not be unreasonably withheld or delayed). Such sign shall be maintained in good repair by Tenant at Tenant's expense.

6.2.8 Parking and Storage. Not to permit any storage of materials outside of the Premises; nor to permit the use of the parking areas for either temporary or permanent storage of trucks; nor permit the use of the Premises for any use for which heavy trucking would be customary.

ARTICLE 7

Casualty or Taking

7.1 Termination. In the event that (a) the Premises or the Building, or any material part thereof, shall be taken by any public authority or for any public use, or (b) the Premises shall be destroyed or damaged by fire or casualty, or by the action of any public authority to the extent of more than 25% of the rentable floor area of the Premises, then this Lease may be terminated at the election of Landlord. Such election, which may be made notwithstanding the fact that Landlord's entire interest may have been divested, shall be made by the giving of notice by Landlord to Tenant within sixty (60) days after the date of the taking or casualty. In the event that the Premises, in whole or in part, are destroyed or damaged by fire or casualty, or by the action of public authority, and, in the reasonable opinion of an independent architect or engineer selected by Landlord, cannot be repaired or restored within one hundred eighty (180) days from the date of the fire or casualty, then this Lease may be terminated at the election of Landlord or Tenant, which election shall be made by the giving of notice to the other party within thirty (30) days after the date the opinion of the architect or engineer is made available to the parties. Notwithstanding the foregoing, in the event all or a material part of the Premises is taken by any public authority for any public use, Tenant shall have the right to terminate this Lease by giving notice to Landlord and the Lease shall terminate as of the date of vesting of title in the condemning authority.

- 7.2 Restoration. If Landlord or Tenant does not elect to so terminate, this Lease shall continue in force and a just proportion of the rent reserved, according to the nature and extent of the damages sustained by the Premises, shall be suspended or abated until the Premises, or what may remain thereof, shall be put by Landlord in proper condition for use, which Landlord covenants to do with reasonable diligence to the extent permitted by the net proceeds of insurance recovered or damages awarded for such taking, destruction or damage and subject to zoning and building laws or ordinances then in existence. "Net proceeds of insurance recovered or damages awarded" refers to the gross amount of such insurance or damages less the reasonable expenses of Landlord incurred in connection with the collection of the same, including without limitation, fees and expenses for legal and appraisal services. If Landlord shall not have restored the Premises within one hundred eighty (180) days from the taking or casualty, Tenant shall have the right to terminate this Lease by giving notice of such termination to Landlord, effective at the expiration of thirty (30) days from the giving of such notice; provided however, that such termination will be rendered ineffective if, prior to the expiration of said 30-day period, Landlord shall have completed such restoration.
- 7.3 Award. Irrespective of the form in which recovery may be had by law, all rights to damages or compensation shall belong to Landlord in all cases, except for Tenant's insurance proceeds allocable to personal property and business loss and, in the case of a taking by a public authority, awards made to Tenant for its personal property, fixtures and moving expenses. Except for such awards, Tenant hereby grants to Landlord all of Tenant's rights to such damages and covenants to deliver such further assignments thereof as Landlord may from time to time request.
- 7.4 Disbursement of Insurance Proceeds. That parties agree that Tenant's property insurance on any improvements in the Premises installed by or on behalf of Tenant (other than Landlord's Work, which shall be insured by Landlord) shall be adjusted and disbursed in accordance with this subsection 7.4. If a fire or other casualty occurs and this Lease is not terminated as a result thereof, the Tenant's insurance shall be adjusted by Tenant and the proceeds thereof shall be paid to Landlord to fund the Landlord's restoration work. If the Lease is terminated as a result of a fire or other casualty, then Tenant's insurance shall be adjusted and the proceeds thereof shall be paid to Tenant, provided, however, that Tenant agrees to pay Landlord for Landlord's share of the insurance proceeds attributable to the improvements in the Premises installed by or on behalf of Tenant not yet paid for by Tenant at the time of such fire or casualty.

ARTICLE 8

Defaults

- 8.1 Events of Default. (a) If Tenant shall default in the performance of any of its obligations to pay the Fixed Rent, Additional Rent or any other sum due Landlord hereunder and if such default shall continue for ten (10) days after written notice from Landlord designating such default or if within thirty (30) days after written notice from Landlord to Tenant specifying any other default or defaults Tenant has not commenced diligently to correct the default or defaults so specified or has not thereafter diligently pursued such correction to completion, or (b) if any assignment shall be made by Tenant or any guarantor of Tenant for the benefit of creditors, or (c) if Tenant's leasehold interest shall be taken on execution, or (d) if a lien or other involuntary encumbrance is filed against Tenant's leasehold interest or Tenant's other property, including said leasehold interest, and is not discharged within ten (10) days thereafter, or (e) if a petition is filed by Tenant or any guarantor of Tenant for liquidation, or for reorganization or an arrangement under any provision of any bankruptcy law or code as then in force and effect, or (f) if an involuntary petition under any of the provisions of any bankruptcy law or code is filed against Tenant or any guarantor of Tenant and such involuntary petition is not dismissed within thirty (30) days thereafter, or (g) if Tenant is in default of the 63 Second Ave Lease beyond applicable notice and cure periods, then, and in any of such cases, Landlord and the agents and servants of Landlord lawfully may, in addition to and not in derogation of any remedies for any preceding breach of covenant, immediately or at any time thereafter without demand or notice enter into and upon the Premises or any part thereof in the name of the whole or mail a notice of termination addressed to Tenant, and repossess the same as of landlord's former estate and expel Tenant and those claiming through or under Tenant and remove its and their effects without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or prior breach of covenants, and upon such entry or mailing as aforesaid this Lease shall terminate, Tenant hereby waiving all statutory rights to the Premises (including without limitation rights of redemption, if any, to the extent such rights may be lawfully waived) and Landlord, without notice to Tenant, may store Tenant's effects, and those of any person claiming through or under Tenant, at the expense and risk of Tenant, and, if Landlord so elects, may sell such effects at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant, if any, and pay over the balance, if any, to Tenant. Landlord shall use reasonable efforts to provide Tenant with thirty (30) days prior notice of any such auction or sale.
- 8.2 Remedies. In the event that this Lease is terminated under any of the provisions contained in Section 8.1 or shall be otherwise terminated for breach of any obligation of Tenant, Tenant covenants to pay forthwith to Landlord, as compensation, the excess of the total rent reserved for the residue of the term over the rental value of the Premises for said residue of the term. In calculating the rent reserved there shall be included, in addition to the Fixed Rent and Additional Rent, the value of all other considerations agreed to be paid or performed by Tenant for said residue. Tenant further covenants as additional and cumulative obligations after any such termination, to pay punctually to Landlord all the sums and to perform all the obligations which Tenant covenants in this Lease to pay and to perform in the same manner and to the same extent and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the next preceding sentence Tenant shall be credited with any amount paid to Landlord as compensation as in this Section 8.2 provided and also with the net proceeds of any rent obtained by Landlord by reletting the Premises, after deducting all Landlord's expense in connection with such reletting.

including, without limitation, all repossession costs, brokerage commissions, fees for legal services and expenses of preparing the Premises for such reletting, it being agreed by Tenant that Landlord may (i) relet the Premises or any part or parts thereof, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the term and may grant such concessions and free rent as Landlord in its sole judgment considers advisable or necessary to relet the same and (ii) make such alterations, repairs and decorations in the Premises as Landlord in its sole judgment considers advisable or necessary to relet the same, and no action of Landlord in accordance with the foregoing or failure to relet or to collect rent under reletting shall operate or be construed to release or reduce Tenant's liability as aforesaid.

Nothing contained in this Lease shall, however, limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

- 8.3 Remedies Cumulative. Any and all rights and remedies which Landlord may have under this Lease, and at law and equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.
- 8.4 Landlord's Right to Cure Defaults. Landlord may, but shall not be obligated to, cure, at any time, without notice, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord, including reasonable attorneys' fees, in curing a default shall be paid, as Additional Rent, by Tenant to Landlord on demand, together with lawful interest thereon from the date of payment by Landlord to the date of payment by Tenant.
- 8.5 Effect of Waivers of Default. Any consent or permission by Landlord to any act or omission which otherwise would be a breach of any covenant or condition herein, shall not in any way be held or construed (unless expressly so declared) to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise, except as to the specific instance, operate to permit similar acts or omissions.
- 8.6 No Waiver, etc. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed to have been a waiver of such breach by Landlord. No consent or waiver, express or implied, by Landlord to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.
- 8.7 No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the Fixed Rent, Additional Rent or any other charge then due shall be deemed to be other than on account of the earliest installment of such rent or charge due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease provided.

ARTICLE 9

Rights of Mortgage Holders

- 9.1 Rights of Mortgage Holders. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments evidencing other voluntary liens or encumbrances, and modifications, consolidations, extensions, renewals, replacements and substitutes thereof. The word "holder" shall mean a mortgagee, and any subsequent holder or holders of a mortgage. Until the holder of a mortgage shall enter and take possession of the Property for the purpose of foreclosure, such holder shall have only such rights of Landlord as are necessary to preserve the integrity of this Lease as security. Upon entry and taking possession of the Property for the purpose of foreclosure, such holder shall have all the rights of Landlord. No such holder of a mortgage shall be liable either as mortgagee or as assignee, to perform, or be liable in damages for failure to perform, any of the obligations of Landlord unless and until such holder shall enter and take possession of the Property for the purpose of foreclosure. Upon entry for the purpose of foreclosure, such holder shall be liable to perform all of the obligations of Landlord, subject to and with the benefit of the provisions of Section 10.4, provided that a discontinuance of any foreclosure proceeding shall be deemed a conveyance under said provisions to the owner of the equity of the Property.

The covenants and agreements contained in this Lease with respect to the rights, powers and benefits of a holder of a mortgage (particularly, without limitation thereby, the covenants and agreements contained in this Section 9.1) constitute a continuing offer to any person, corporation or other entity, which by accepting a mortgage subject to this Lease, assumes the obligations herein set forth with respect to such holder; such holder is hereby constituted a party of this Lease as an obligee hereunder to the same extent as though its name were written hereon as such; and such holder shall be entitled to enforce such provisions in its own name. Tenant agrees on request of Landlord to execute and deliver from time to time any agreement which may be necessary to implement the provisions of this Section 9.1.

- 9.2 Lease Superior or Subordinate to Mortgages. It is agreed that the rights and interest of Tenant under this Lease shall be (i) subject or subordinate to any present or future mortgage or mortgages and to any and all advances to be made thereunder, and to the interest of the holder thereof in the Premises or any property of which the Premises are a part if Landlord shall elect by notice to Tenant to subject or subordinate the rights and interest of Tenant under this Lease to such mortgage or (ii) prior to any present or future mortgage or mortgages, if Landlord shall elect, by notice to Tenant, to give the rights and interest of Tenant under this Lease priority to such mortgage; in the event of either of such elections and upon notification by Landlord to that effect, the rights and interest of Tenant under this Lease should be deemed to be subordinate to, or have priority over, as the case may be, said mortgage or mortgages, irrespective of the time of execution or time of recording of any such mortgage or mortgages (provided that, in the case of subordination of this Lease to any future mortgages, the holder thereof agrees not to disturb the possession of Tenant so long as Tenant is not in default hereunder and Tenant and the holder execute a commercially reasonable subordination, non-disturbance and attornment agreement in the holder's usual and customary form). Tenant agrees it will, upon not less than ten (10) days' prior written request by Landlord, execute, acknowledge and deliver any and all commercially reasonable instruments deemed by Landlord necessary or desirable to give effect to or notice of such subordination or priority. Any Mortgage to which this Lease shall be subordinated may contain such terms, provisions and conditions as the holder deems usual or customary. Landlord shall use reasonable efforts to obtain a so-called non-disturbance agreement for the benefit of Tenant from its current lender in said lender's usual and customary form.

ARTICLE 10
Miscellaneous Provisions

- 10.1 Notices from One Party to the Other. All notices required or permitted hereunder shall be in writing and addressed, if to the Tenant, at the Original Notice Address of Tenant or such other address as Tenant shall have last designated by notice in writing to Landlord and, if to Landlord, at the Original Notice Address of Landlord or such other address as Landlord shall have last designated by notice in writing to Tenant. Any notice shall be deemed duly given when mailed to such address postage prepaid, by registered or certified mail, return receipt requested, or when delivered to such address by hand.
- 10.2 Quiet Enjoyment. Landlord agrees that upon Tenant's paying the rent and performing and observing the agreements, conditions and other provisions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises during the term hereof without any manner of hindrance or molestation from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.
- 10.3 Lease not to be Recorded. Tenant agrees that it will not record this Lease. Both parties shall, upon the request of either, execute and deliver a notice or short form of this Lease in such form, if any, as may be permitted by applicable statute. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact (which appointment shall survive termination of the term of this Lease) with full power of substitution to execute, acknowledge and deliver a notice of termination of lease in Tenant's name if Tenant fails, within 10 days after request therefor, to either execute, acknowledge or deliver such notice of termination or give Landlord written notice setting forth the reasons why Tenant is refusing to deliver such notice of termination.
- 10.4 Limitation of Landlord's Liability. The term "Landlord" as used in this Lease, so far as covenants or obligations to be performed by Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Property, and in the event of any transfer or transfers of title to said property, the Landlord (and in case of any subsequent transfers or conveyances, the then grantor) shall be concurrently freed and relieved from and after the date of such transfer or conveyance, without any further instrument or agreement of all liability as respects the performance of any covenants or obligations on the part of the Landlord contained in this Lease thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord, shall, subject as aforesaid, be binding on the Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership of said leasehold interest or fee, as the case may be. Tenant, its successors and assigns, shall not assert nor seek to enforce any claim for breach of this Lease against any of Landlord's assets other than Landlord's interest in the Property and in the rents, issues and profits thereof, and Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against Landlord under this Lease, it being specifically agreed that in no event whatsoever shall Landlord (which term shall include, without limitation, any general or limited partner, trustees, beneficiaries, officers, directors, or stockholders of Landlord) ever be personally liable for any such liability.
- 10.5 Acts of God. In any case where either party hereto is required to do any act, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortages of labor, materials or equipment, government regulations, unusually severe weather, or other causes beyond such party's reasonable control shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time or a "reasonable time," and such time shall be deemed to be extended by the period of such delay.
- 10.6 Landlord's Default. Landlord shall not be deemed to be in default in the performance of any of its obligations hereunder unless it shall fail to perform such obligations and such failure shall continue for a period of thirty (30) days or such additional time as is reasonably required to correct any such default after written notice has been given by Tenant to Landlord specifying the nature of Landlord's alleged default. Landlord shall not be liable in any event for incidental or consequential damages to Tenant by reason of

Landlord's default, whether or not notice is given. Tenant shall have no right to terminate this Lease for any default by Landlord hereunder and no right, for any such default, to offset or counterclaim against any rent due hereunder.

- 10.7 Brokerage. Tenant warrants and represents that it has dealt with no broker in connection with the consummation of this Lease, other than The Stephens Group (the "Broker"), and in the event of any brokerage claims, other than by the Broker against Landlord predicated upon prior dealings with Tenant, Tenant agrees to defend the same and indemnify and hold Landlord harmless against any such claim. Landlord warrants and represents that it has dealt with no broker in connection with the consummation of this Lease, other than the Broker and in the event of any brokerage claims, other than by the Broker against Tenant predicated upon prior dealings with Landlord, Landlord agrees to defend the same and indemnify and hold Tenant harmless against any such claim. Landlord shall pay 50% of the commission owed to the Broker (up to a maximum payment by Landlord of \$25,000.00) pursuant to a separate agreement. Tenant shall be responsible for the balance of the commission owed to the Broker (i.e. 50% of the commission, if the same is equal to or less than \$50,000.00 in total, and otherwise the difference between the total commission owed to Broker and the \$25,000.00 being paid by Landlord above) pursuant to a separate written agreement. By way of example only, if the total commission owed to the Broker is \$60,000.00, then Landlord shall be responsible for \$25,000.00, and Tenant shall be responsible for \$35,000.00.
- 10.8 Applicable Law and Construction; Merger; Jury Trial. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and, if any provisions of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby. This Lease and the Exhibits attached hereto and forming a part hereof constitute all the covenants, promises, agreements, and understandings between Landlord and Tenant concerning the Premises and the Building and there are no covenants, promises, agreements or understandings, either oral or written, between them other than as are set forth in this Lease. Neither Landlord nor Landlord's agents shall be bound to any representations with respect to the Premises, the Building or the Property except as herein expressly set forth, and all representations, either oral or written, shall be deemed to be merged into this Lease. The titles of the several Articles and Sections contained herein are for convenience only and shall not be considered in construing this Lease. Tenant shall and does hereby waive trial by jury in any action, proceeding, or claim brought by or against Landlord regarding any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises. Unless repugnant to the context, the words "Landlord" and "Tenant" appearing in this Lease shall be construed to mean those named above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them respectively. If there be more than one person or entity named as tenant, the obligations imposed by this Lease upon Tenant shall be joint and several.

ARTICLE 11

Hazardous Materials

- 11.1 No Releases of Hazardous Materials. Tenant covenants and agrees not to use, release, dispose, manufacture, store, or transport any Hazardous Materials (hereinafter defined) at, on, under or from the Premises and the Property except in compliance with any and all laws, regulations, ordinances or orders promulgated, and as may be amended, by any governmental authority having jurisdiction over the Hazardous Materials or the Property (collectively, "Legal Requirements"), and except for those Hazardous Materials used in the ordinary course of Tenant's business, but only in compliance with all applicable Legal Requirements and any reasonable requirements of Landlord (such as requirements for fencing or other locked enclosures). Tenant shall comply with all governmental reporting requirements with respect to Hazardous Materials and all chemicals and flammable substances (in whatever form) used by Tenant in its business operations, and shall deliver to Landlord copies of all such reports. In the event that a release or threat of release of Hazardous Materials occurs at, from or upon the Premises or Property during the term of this Lease, Tenant shall at its expense perform all actions required under any and all applicable Legal Requirements to assess, contain, remove or respond to such release or threat of release; provided, however, that Tenant's work or actions hereunder shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing sentence, in the event of an environmental emergency whereby a governmental authority having jurisdiction has directed or Legal Requirements specify Tenant to take immediate action to report and/or to contain, remove or respond to a release or threat of release, and provided Tenant has used reasonable efforts to contact Landlord for approval as aforesaid and Landlord has failed to timely respond to Tenant, Tenant shall be permitted to take such immediate action and shall use best efforts to inform Landlord of the actions so taken, it being understood and agreed that any further actions beyond the emergency action shall still require Landlord's approval as aforesaid. The term "Hazardous Materials" shall mean any and all materials defined or classified as "hazardous materials," "hazardous waste," "hazardous substance," "toxic substance," "hazardous pollutant," "toxic pollutant" or "oil" under 42 U.S.C. §9601 et. seq. (CERCLA), 42 U.S.C. §6901 et. seq. (RCRA), M.G.L. c. 21C or M.G.L. c. 21E and any regulations promulgated pursuant to those statutes, all as amended.
- 11.2 Notices of Release of Hazardous Materials. Tenant shall promptly notify Landlord in writing of all spills, releases or threat of release of Hazardous Materials caused by or involving Tenant or its business operations, and all notices, orders, fines or communications of any kind received by Tenant from any governmental authority or third party concerning the presence or suspected presence of Hazardous Materials on the Premises or the Property, the migration or suspected migration of Hazardous Materials from the Premises or the Property to other property, or the migration or suspected migration of Hazardous Materials from other property to the Premises or the Property.

-
- 11.3 Landlord's Right to Inspect. Landlord, its officers, employees, contractors and agents shall have the right, but not the duty, to inspect areas of the Premises, Building and Property to determine whether Tenant is complying with CERCLA, RCRA, Chapter 21C, Chapter 21E, and other state and federal environmental laws, or regulations promulgated pursuant to any of the foregoing, as amended. Landlord shall use reasonable efforts to minimize interference with Tenant's business, but shall not be liable for any interference caused thereby, provided Landlord shall have used such reasonable efforts. Landlord shall use reasonable efforts to perform such inspections pursuant to this Section 11.3 during normal business hours.
- 11.4 Landlord's Right to Audit. Tenant shall permit Landlord, its employees and its agents (including its environmental consultant), access to all areas of the Premises for the purposes of conducting an environmental assessment or inspection during regular business hours, or during other hours either by agreement of the parties or in the event of an environmental emergency. In the event Landlord shall exercise its rights under this Section 11.4, (i) Landlord shall use reasonable efforts to minimize interference with Tenant's business, but shall not be liable for any interference caused thereby, provided Landlord shall have used such reasonable efforts; and (ii) except in the case of an environmental emergency, Landlord shall exercise said assessment or inspection right no more than one time during any 12 month period of the term, provided, however, that said limitation of one audit every 12 months (a) shall not apply and be counted towards any assessments or inspections required by any lender of Landlord; and (b) shall be deemed void and of no force and effect in the event Landlord has a reasonable belief that a release or threat of release of Hazardous Materials or a violation of a Legal Requirement existed or exists at, on, under or from the Premises or the Property.
- 11.5 Tenant Audit. Landlord shall have the right, from time to time, during the term of this Lease (provided that Landlord has a reasonable belief that Hazardous Materials are present on the Property and are in violation of any Legal Requirements and has delivered to Tenant evidence to support such belief) and upon the expiration of the term of this Lease, to require that Tenant hire, and in such event, Tenant shall at its own expense hire, an environmental consultant satisfactory to Landlord to undertake an environmental assessment, inspection and/or sampling at the Property to determine whether Hazardous Materials have been released during the term of the Lease.
- 11.6 Remediation. Should the assessment, inspection or sampling performed pursuant to Sections 11.4 or 11.5 above, or any other assessment, inspection or sampling, reveal that there has been a release or threat of release of Hazardous Materials by Tenant or its employees, agents or contractors, then Tenant shall, at its expense, undertake all response actions required by Landlord or any Legal Requirement, and Tenant shall promptly thereafter restore any areas damaged or affected by such response actions.
- 11.7 Tenant's Reporting Requirements; Management and Safety Plan. Upon the execution of this Lease, Tenant shall submit to Landlord a list that specifies the materials that Tenant will use or store on the Premises in the ordinary course of its business. Tenant shall provide Landlord with an updated list every twelve (12) months. Any additions to said list will be subject to the approval of Landlord, which shall not be unreasonably withheld or delayed, provided, however, that Landlord's approval shall not be required if said materials are being used solely and exclusively by Tenant and in connection with the research and development and manufacturing of medical devices. In all other cases, Landlord's approval shall be required. Within thirty (30) days after the Date of this Lease, Tenant shall at its expense prepare and deliver to Landlord and Landlord's environmental consultant for their review and approval a so-called "Chemical Management and Facility Safety Plan" (the "Plan"). Tenant shall amend the Plan if requested by Landlord. Tenant shall operate its business at the Premises in accordance with the procedures and practices set forth in said Plan, and shall promptly remedy from time to time any practices, procedures or conditions, at Tenant's expense, that violate, or which in the reasonable judgment of Landlord or its consultant, would with the passage of time violate, the provisions of this Article 11.
- 11.8 Indemnification. Tenant agrees to indemnify and save Landlord harmless from all claims, liability, loss or damage to the extent arising on account of the use, release, threat of release, holding, handling, transport, storage, or disposal of Hazardous Materials by Tenant, its employees, agents or contractors at, on, upon or from the Premises or Property from and after the Date of this Lease, including, without limitation, liability under any federal, state, or local laws, requirements and regulations, or damage to any of the systems of the Building or the Property. The provisions of this Section 11.8 shall survive the expiration or earlier termination of this Lease.
- 11.9 Notice to Tenant. Landlord shall use reasonable efforts to notify Tenant of any release of Hazardous Materials by any other tenants of the Park on any properties owned by Landlord which abut the Property provided Landlord first has knowledge of the same.
- 11.10 Asbestos. Landlord is in the process of commissioning a study of the Building for asbestos (the "Asbestos Report"). Landlord shall be responsible, at its sole cost and expense, for removing or encapsulating asbestos, if any, found in the Building, if such removal or encapsulation is recommended by the Asbestos Report (the "Asbestos Work"). For the purposes of this Lease, the Asbestos Work (if any) shall be considered part of the Base Building Work.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the execution hereof under seal on the day and year first above written:

Landlord:

/s/ Rodger P. Nordblom
As Trustee, but not individually

/s/ Peter C. Nordblom
As Trustee, but not individually

Tenant:

/s/ Trent G. Kamke
By: Trent G. Kamke
Its: Senior VP – Operations

EXHIBIT A

PLAN SHOWING THE PREMISES

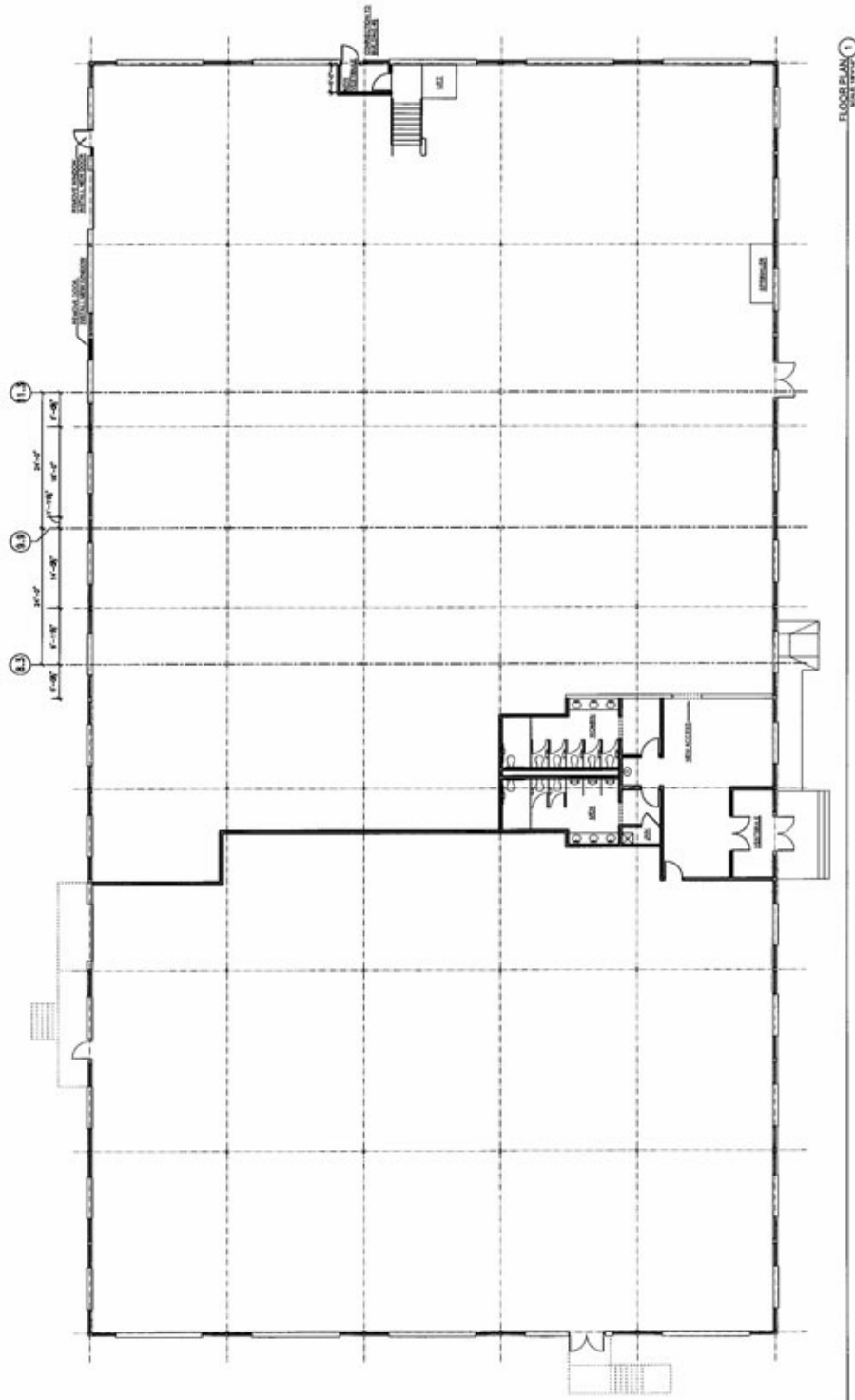


EXHIBIT B

COMMENCEMENT DATE NOTIFICATION

To: _____

(Tenant)

("Landlord") and ("Tenant") are parties to a lease ("Lease") dated of premises in a building known as , Massachusetts. Landlord hereby notifies Tenant that the term of the Lease commenced on _____ and will end on _____. Although not required for this notification to be effective, we would appreciate your confirming the foregoing by signing the enclosed copy of this letter and returning it to us.

(Landlord)

By: _____

Confirmed:

(Tenant)

By: _____

EXHIBIT C

BASE BUILDING WORK

Generally in conformance with Exhibit A the Landlord, at its expense, has budgeted to provide the improvements outlined below. Should the Tenant determine that any of these proposed improvements are not compatible with the Tenant's intended use of the Premises and therefore will not be constructed, then the Landlord will apply the dollar value of any such not-provided improvements to the Tenant Improvement Work (Exhibit C-1).

- Structure:** The existing steel structure of the building will be modified by adding new steel columns and associated roof members to create approximately 2,300 square feet of high-bay space measuring a minimum of 20 feet above the finished floor. Additional structural reinforcement will be added to the building to meet code requirements for snow loading and lateral bracing.
- Roof:** A new single-ply, EPDM membrane will be installed.
- Site Improvements:** A covered walkway will be constructed connecting 53 Second Avenue to 63 Second Avenue.
- Toilet Rooms:** One toilet room core with fixtures designed to meet code will be constructed. The toilet room walls will be drywall/metal stud construction. All toilet rooms will have ceramic tile floors and wet walls.
- Millwork:** Solid-surface countertops will be installed at the toilet core.
- Ceiling:** Suspended ceilings will be installed in the vestibule and bathroom core, with drywall soffits above the sinks. No other ceilings are included.
- Flooring:** The tenant space will receive 12" x 12" vinyl composition tile with vinyl cove base throughout. Ceramic tile will be installed in the bathroom core.
- Painting:** All drywall partitions will receive two coats of latex-based paint. The roof deck and steel structure will be painted a color acceptable to both Landlord and Tenant.
- Electric:** A new 1600 amp, 277/480 volt, 3 phase, 4 wire service will be installed. Utility receptacles, emergency lighting, night lighting, exterior parking lot lighting, and fire alarm will be installed per code. General duty outlets will be installed in the perimeter walls per code. Energy efficient high bay lighting will be installed throughout tenant's space.
- Sprinkler:** The entire building will have a wet pipe system for Ordinary Hazard Group II use. Sprinkler heads will be installed per code for open layout with heads pointing up throughout, except for the vestibule and bathroom core where the heads will be installed in the drywall ceiling per code.
- HVAC:** A new system will be installed, designed to meet current A.S.H.R.A.E. standards for the open floor plan, consisting of 2 twenty ton and 2 fifteen ton constant volume rooftop units with gas fired heat and electric cooling. Distribution will be designed to accommodate an open floor plan. New ventilation fans will be installed in the bathroom core.
- Partitions:** The inside of the exterior walls will receive steel studs 16" on center with bat insulation and 5/8" gypsum wall board from slab to roof deck. A demising wall will be constructed using steel studs 16" on center with bat insulation and 5/8" gypsum wall board from slab to roof deck. Drywall partitions for the bathroom core and electrical and sprinkler rooms will be steel studs, 16" on center with 1/2" gypsum wall board to the underside of the roof deck.
- Plumbing:** All plumbing required to accommodate the new bathroom core will be installed and connected to the under slab sanitary waste line tied into the municipal sewer system. A drinking fountain and utility sink in the janitor's closet will be installed.
- Toilet Compartments:** Floor mounted, baked enamel, steel toilet cubicles will be installed in the men's and women's toilet rooms and wall mounted urinal screens will be installed in the men's toilet room.

EXHIBIT C-1

TENANT IMPROVEMENT WORK

The Landlord, at the Tenant's expense, will provide Landlord-approved additional improvements to the Premises not included in the Base Building Work.

Note: Tenant will be required to contract directly for tel/data and security system.

EXHIBIT D

WORK CHANGE ORDER

Lease Date: _____ Date: _____

Landlord: _____ Work Change Order No.: _____

Tenant: _____ Building Address: _____

Premises: _____

Tenant directs Landlord to make the following additions to Landlord's work:

Description of additional work:

Work Change Order Amount:

Amount of Previous Work Change Orders:

This Work Change Order:

Total Amount of Work Change Orders:

Landlord approves this Work Change Order and Tenant agrees to pay to Landlord the Total Amount of Work Change Orders at the earlier of ten days following receipt of the Certificate of Occupancy of the premises or occupancy of the premises by Tenant.

Tenant: _____ Landlord: _____

By: _____ By: _____

Title: _____ Title: _____

EXHIBIT E

RULES AND REGULATIONS

1. The sidewalks, entrances, passages, corridors, vestibules, halls, elevators, or stairways in or about the Building shall not be obstructed by Tenant.
2. Tenant shall not place objects against glass partitions, doors or windows which would be unsightly from the Building corridor or from the exterior of the Building.
3. If Tenant's use of the Premises causes any increase above normal insurance premiums on the Building, Tenant shall be responsible for any pay to Landlord the amount of any increase in the insurance premiums.
4. No vehicles, or animals of any kind shall be brought into or kept in or about the Premises. No space in the Building shall be used for the sale of merchandise of any kind at auction or for storage thereof preliminary to such sale.
5. Tenant shall cooperate with Landlord in minimizing loss and risk thereof from fire and associated perils.
6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed and constructed and no sweepings, rubbish, rags, acid or like substance shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the Tenant.
7. Landlord reserves the right to establish, modify, and enforce reasonable parking rules and regulations, provided such rules and obligations do not diminish Tenant's rights under the Lease.
8. Landlord reserves the right at any time to rescind, alter or waive any rule or regulation at any time prescribed for the Building and to impose additional reasonable rules and regulations when in its judgment deems it necessary, desirable or proper for its best interest and for the best interest of the tenants and no alteration or waiver of any rule or regulation in favor of one tenant shall operate as an alteration or waiver in favor of any other tenant, provided such rules and regulations do not diminish Tenant's rights under the Lease. Landlord shall not be responsible to any tenant for the nonobservance or violation by any other tenant however resulting of any rules or regulations at any time prescribed for the Building.
9. Tenant acknowledges that the Building has been designated a non-smoking building. At no time shall Tenant permit its agents, employees, contractors, guests or invitees to smoke in the Building or, except in specified locations, directly outside the Building.

EXHIBIT F

TENANT ESTOPPEL CERTIFICATE

TO: _____ (“Mortgagee” or “Purchaser”)

THIS IS TO CERTIFY THAT:

1. The undersigned is the tenant (the “Tenant”) under that certain lease (the “Lease”) dated _____, 20__ , by and between _____ as landlord (the “Landlord”), and the undersigned, as Tenant, covering those certain premises commonly known and designated as _____ (the “Premises”) in the building located at _____, _____, Massachusetts.
2. The Lease is attached hereto as Exhibit A and (i) constitutes the entire agreement between the undersigned and the Landlord with respect to the Premises, (ii) is the only Lease between the undersigned and the Landlord affecting the Premises and (iii) has not been modified, changed, altered or amended in any respect, except (if none, so state):

3. The undersigned has accepted and now occupies the Premises as of the date hereof, and all improvements, if any, required by the terms of the Lease to be made by the Landlord have been completed and all construction allowances to be paid by Landlord have been paid. In addition, the undersigned has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate of rental payments or any other type of rental or other economic inducement or concession except (if none, so state):

4.
 - (1) The term of the Lease began (or is scheduled to begin) on _____, 20__ and will expire on _____, 20__ ;
 - (2) The fixed rent for the Premises has been paid to and including _____, 20__ ;
 - (3) The fixed rent being paid pursuant to the Lease is at the annual rate of \$ _____; and
 - (4) The escalations payable by Tenant under the Lease are currently \$ _____, based on a pro rata share of _____%, and have been reconciled through _____, 20__ .
5. (i) No party to the Lease is in default, (ii) the Lease is in full force and effect, (iii) the rental payable under the Lease is accruing to the extent therein provided thereunder, (iv) as of the date hereof the undersigned has no charge, lien or claim of off-set (and no claim for any credit or deduction) under the Lease or otherwise, against rents or other charges due or to become due thereunder or on account of any prepayment of rent more than one (1) month in advance of its due date, and (v) Tenant has no claim against Landlord for any security, rental, cleaning or other deposits, except (if none, so state):

6. Since the date of the Lease there are no actions, whether voluntary or otherwise, pending against the undersigned under the bankruptcy, reorganization, arrangement, moratorium or similar laws of the United States, any state thereof of any other jurisdiction.
7. Tenant has not sublet, assigned or hypothecated or otherwise transferred all or any portion of Tenant’s leasehold interest.
8. Neither Tenant nor Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease, nor does Tenant have any right to terminate the Lease, except (if none, so state):
9. Tenant has no option or preferential right to purchase all or any part of the Premises (or the real property of which the Premises are a part) nor any right or interest with respect to the Premises or the real property of which the Premises are a part. Tenant has no right to renew or extend the term of the Lease or expand the Premises except (if none, so state):
10. The undersigned acknowledges that the parties named herein are relying upon this estoppel certificate and the accuracy of the information contained herein in making a loan secured by the Landlord’s interest in the Premises, or in connection with the acquisition of the Property of which the Premises is a part.

EXECUTED UNDER SEAL AS OF _____, 20__.

TENANT:

By: _____

Name:

Title:

Duly Authorized

EXHIBIT G

LANDLORD'S CONSENT AND WAIVER

WHEREAS, _____ (the "Tenant") has or is about to enter into certain financing agreements with _____ (the "Bank") pursuant to which the Bank has been or may be granted a security interest in certain property of the Tenant; and

WHEREAS, Tenant is the tenant, pursuant to a lease agreement by and between Tenant and the undersigned (the "Landlord") dated as of _____ (the "Lease"), of certain demised premises contained in the building located at the following address:

and more particularly described in the Lease (the "Premises");

NOW, THEREFORE, for valuable consideration, the Landlord agrees, for as long as Tenant remains indebted to the Bank, as follows:

(a) Landlord acknowledges and agrees that the personal property of Tenant (which for purposes hereof shall not include computer wiring, telephone wiring and systems, and demountable partitions) in which the Bank has been granted a security interest (the "Bank Collateral") may from time to time be located on the Premises;

(b) Landlord subordinates, waives, releases and relinquishes unto the Bank, its successors or assigns, all right, title and interest, if any, which the Landlord may otherwise claim in and to the Bank Collateral, except as provided in subparagraph (d) hereinbelow;

(c) Upon providing the Landlord with at least five (5) business days' prior written notice that Tenant is in default of its obligations to the Bank, the Bank shall then have the right to enter the Premises during business hours for the purpose of removing said Bank Collateral, provided (i) the Bank completes the removal of said Bank Collateral within ten (10) business days following said first written notice of default, and (ii) the Bank restores any part of the Premises which may be damaged by such removal to its condition prior to such removal in an expeditious manner not to exceed ten (10) business days following said first written notice of default;

(d) Upon receipt of written notice from Landlord of the expiration or earlier termination of the Lease, the Bank shall have ten (10) business days to enter the Premises during business hours, remove said Bank Collateral, and restore any part of the Premises which may be damaged by such removal to its condition prior to such removal. If the Bank fails to so remove the Bank Collateral, the Bank agrees that the Bank Collateral shall thereupon be deemed subject to the yield up provisions of the Lease, so the Landlord may treat the Bank Collateral as abandoned, deem it Landlord's property, if Landlord so elects, and retain or remove and dispose of it, all as provided in the Lease;

(e) All notices and other communications under this Landlord's Consent and Waiver shall be in writing, and shall be delivered by hand, by a nationally recognized commercial next day delivery service, or by certified or registered mail, return receipt requested, and sent to the following addresses:

if to the Bank: _____

Attention: _____

with a copy to: _____

if to the Landlord: c/o Nordblom Management Company, Inc.
15 Third Avenue
Burlington, MA 01803

Such notices shall be effective (a) in the case of hand deliveries, when received, (b) in the case of a next day delivery service, on the next business day after being placed in the possession of such delivery service with next day delivery charges prepaid, and (c) in the case of mail, five (5) days after deposit in the postal system, certified or registered mail, return receipt requested and postage prepaid. Either party may change its address and telecopy number by written notice to the other as provided above; and

(f) The Bank shall indemnify and hold harmless the Landlord for any and all damage caused as a result of the exercise of the Bank's rights hereunder.

This Landlord's Consent and Waiver may not be changed or terminated orally and inures to the benefit of and is binding upon the Landlord and its successors and assigns, and inures to the benefit of and is binding upon the Bank and its successors and assigns.

IN WITNESS WHEREOF, Landlord and Bank have each executed this Landlord's Consent and Waiver or caused it to be executed by an officer thereunto duly authorized, and the appropriate seal to be hereunto affixed, this _____ day of _____, 200__.

LANDLORD:

By: _____
(Name)
(Title)

BANK:

By: _____
(Name)
(Title)

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this _____ day of _____, 200__, before me, the undersigned Notary Public, personally appeared the above-named _____, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatories, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by her/him voluntarily for its stated purpose.

Print Name: _____
My commission expires: _____

STATE OF _____

_____ County, ss.

On this _____ day of _____, 200__, before me, the undersigned Notary Public, personally appeared the above-named _____, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatories, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, that he/she signed it as _____ for _____, and acknowledged the foregoing to be signed by her/him voluntarily for its stated purpose.

Print Name: _____
My commission expires: _____

SUBSIDIARIES OF THE REGISTRANT

The following is a list of our subsidiaries:

<u>Name</u>	<u>State or Other Jurisdiction of Incorporation</u>	<u>Name Under Which Does Business</u>
Biomateriali S.r.l.	Italy	Same
LeMaitre UK Acquisition LLC	Delaware	Same
LeMaitre Vascular GmbH	Germany	Same
LeMaitre Vascular GK	Japan	Same
LeMaitre Acquisition LLC	Delaware	Same
LeMaitre Vascular SAS	France	Same
LeMaitre Vascular S.r.l.	Italy	Same
Vascutech Acquisition LLC	Delaware	Same

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-138181) pertaining to the 1997 Stock Option Plan, 1998 Stock Option Plan, 2000 Stock Option Plan, 2004 Stock Option Plan, 2006 Stock Option and Incentive Plan, and the 2006 Employee Stock Purchase Plan of LeMaitre Vascular, Inc., and
- (2) Registration Statement (Form S-8 No. 333-161361) pertaining to the Amended and Restated 2006 Stock Option and Incentive Plan of LeMaitre Vascular, Inc.;

of our report dated March 29, 2010, with respect to the consolidated financial statements and schedule of LeMaitre Vascular, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2009.

/s/ Ernst & Young LLP

Boston, Massachusetts
March 29, 2010

CERTIFICATIONS

I, George W. LeMaitre, certify that:

1. I have reviewed this Annual Report on Form 10-K of LeMaitre Vascular, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GEORGE W. LEMAITRE

George W. LeMaitre
Chairman and Chief Executive Officer

Date: March 29, 2010

CERTIFICATIONS

I, Joseph P. Pellegrino, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of LeMaitre Vascular, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ JOSEPH P. PELLEGRINO, JR.

Joseph P. Pellegrino, Jr.
Chief Financial Officer

Date: March 29, 2010

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of LeMaitre Vascular, Inc. (the "Company") on Form 10-K for the period ending December 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, George W. LeMaitre, Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being provided pursuant to 18 U.S.C. § 1350 and is not to be deemed a part of the Report, nor is it to be deemed to be "filed" for any purpose whatsoever.

/s/ GEORGE W. LEMAITRE

George W. LeMaitre
Chairman and Chief Executive Officer

March 29, 2010

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of LeMaitre Vascular, Inc. (the "Company") on Form 10-K for the period ending December 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joseph P. Pellegrino, Jr., Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

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

This certification is being provided pursuant to 18 U.S.C. § 1350 and is not to be deemed a part of the Report, nor is it to be deemed to be "filed" for any purpose whatsoever.

/s/ JOSEPH P. PELLEGRINO, JR.

Joseph P. Pellegrino, Jr.
Chief Financial Officer

March 29, 2010