As filed with the Securities and Exchange Commission on June 3, 2005

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ELECTRO-OPTICAL SCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware	**3841**	**13-3986004**
(State or other jurisdiction of incorporation or organization)	*(Primary standard industrial classification code number)*	*(I.R.S. Employer Identification Number)*

3 West Main Street, Suite 201
Irvington, New York 10533
(914) 591-3783

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Joseph V. Gulfo, M.D.
President and Chief Executive Officer
Electro-Optical Sciences, Inc.
3 West Main Street, Suite 201
Irvington, New York 10533
(914) 591-3783

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act") check the following box. o

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common stock, par value $0.001 per share	$33,000,000	$3,884.10

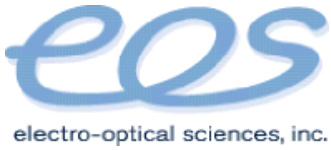
(1) Estimated solely for purposes of determining the registration fee pursuant to Rule 457(o) under the Securities Act.

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

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

SUBJECT TO COMPLETION, DATED JUNE , 2005

PROSPECTUS



l Shares

Electro-Optical Sciences, Inc.

Common Stock

This is the initial public offering of l shares of common stock of Electro-Optical Sciences, Inc.

We expect the public offering price to be between $ l and $ l per share. There presently is no public market for our securities and we cannot ensure you that a market will develop. We have applied to list our common stock on the NASDAQ National Market under the symbol "MELA."

Investing in our common stock is highly speculative and involves a high degree of risk. See "Risk Factors" beginning on Page 7.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	$ l	$ l
Underwriting discounts and commissions	$ l	$ l
Proceeds, before expenses, to Electro-Optical Sciences, Inc.	$ l	$ l

To the extent the underwriters sell more than l shares of common stock, the underwriters have the option to purchase up to an additional l shares from us at the public offering price less the underwriting discount, within 45 days from the date of this prospectus to cover over-allotments. The underwriters will also receive a non-accountable expense allowance in the amount of one percent (1%) of the total public offering price (excluding the over-allotment option). In addition, upon completion of this offering, the underwriters will receive warrants to purchase up to an aggregate of l shares of our common stock at an exercise price equal to 125% of the public offering price per share. The warrants will be exercisable commencing on the first anniversary of the date of this prospectus and ending on the fifth anniversary of the date of this prospectus.

The underwriters expect to deliver the shares on or about l , 2005.

Ladenburg Thalmann & Co. Inc. **Stanford Group Company**

The date of this prospectus is l , 2005.

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You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. We are offering to sell shares of our common stock and seeking offers to buy shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the common stock.

For investors outside the US: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the US. You are required to inform yourselves about, and to observe any restrictions relating to, this offering and the distribution of this prospectus.

We obtained statistical data and certain other industry forecasts used throughout this prospectus from market research, publicly available information and industry publications. Industry publications generally state that they obtain their information from sources that they believe to be reliable, but they do not guarantee the accuracy and completeness of the information. Similarly, while we believe that the statistical and industry data and forecasts and market research used herein are reliable, we have not independently verified such data, and we do not make any representation as to the accuracy of the information. We have not sought the consent of the sources to refer to their reports in this prospectus.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. It does not contain all of the information you should consider before buying shares of our common stock. You should read this entire prospectus carefully, especially the "Risk Factors" section and our financial statements and the related notes appearing at the end of this prospectus, before deciding to invest in shares of our common stock. Unless otherwise stated or the context otherwise requires, reference in this prospectus to "EOS," "we," "us," "our" and similar references refer to Electro-Optical Sciences, Inc.

Our Business

We are a medical device company focused on the design and development of a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma. Our flagship product, MelaFind®, features a hand-held imaging device that emits multiple wavelengths of light to capture images of suspicious pigmented skin lesions and extract data. The data are then analyzed against our proprietary database of melanomas and benign lesions using our sophisticated algorithms in order to provide information to the physician and produce a recommendation of whether the lesion should be biopsied.

The components of the MelaFind® system include:

- a *hand-held imaging device*, which employs high precision optics and multi-spectral illumination (multiple colors of light including near infra-red);
- our *proprietary database* of pigmented skin lesions, which we believe to be the largest in the US;
- our *lesion classifiers*, which are sophisticated mathematical algorithms that extract lesion feature information and classify lesions; and
- a *central server* in our offices that is intended to perform quality control functions and provide reports to the physician and in commercial use, will be connected to physicians' offices via the internet.

We have entered into a binding Protocol Agreement with the US Food and Drug Administration (FDA), which is an agreement for the conduct of the pivotal trial in order to establish the safety and effectiveness of MelaFind®. We believe the presence of the Protocol Agreement significantly enhances our ability to expedite the FDA approval process. Management estimates that the study will commence in early 2006 at over 20 US clinical study sites, and anticipates premarket approval (PMA) to commercialize MelaFind® in 2007.

The Market Opportunity

Cancers of the skin have a higher incidence than all other cancers combined, and the rates are rising dramatically. There are millions of people worldwide who are diagnosed with skin cancer; with many sadly succumbing to its effects. Melanoma is responsible for approximately 80% of skin cancer fatalities and is the deadliest of all skin cancers as there is currently no cure for advanced stage melanoma. However, early detection of melanoma can lead to virtually a 100% cure rate. Therefore, the need for medical practitioners to be able to examine individuals during a routine annual exam, resulting in early detection and treatment of skin cancer cannot be overstated. Advanced stage melanoma is costly to treat and is responsible for approximately 90% of the total spending on melanoma treatment in the US, costing up to $170,000 per patient. If diagnosed early, however, melanoma is almost always cured by simple resection at a cost of approximately $1,800 per patient.

Melanoma is currently the subject of significant attention in the medical community. In part, this attention is due to the fact that it is the fastest growing cancer. It is also the most common cancer in young adults ages 20-30, and currently there are more new cases of melanoma than HIV/ AIDS. In women ages 20-29, melanoma is the primary cause of cancer death. In women ages 30-35, melanoma is the second leading cause of death after breast cancer. Recent published papers identify a strong correlation between breast cancer and melanoma.

Because early detection is critical to survival, the American Cancer Society recommends that individuals 40 years and older have complete skin examinations on an annual basis. According to the 2000 US Census data, over 100 million Americans in the US are over age 40. Furthermore, there are more than 20 million individuals in the US who have dysplastic nevi, a type of pigmented skin lesion that when present is associated with an increased risk of melanoma. These individuals warrant more frequent observation.

Limitations of Current Melanoma Diagnosis

Melanomas are mainly diagnosed by dermatologists and/or primary care physicians using only visual clinical evaluation. Physicians assess pigmented skin lesions using the "ABCDE" criteria, Asymmetry, Border irregularity, Color variation, Diameter greater than 6 mm, and Evolving — change in ABCD over time. This assessment is subjective and results in missed melanomas, as well as a ratio of benign lesions biopsied to melanomas confirmed that is highly variable and as high as 40 to 1 for dermatologists and as high as 50 to 1 for primary care physicians.

Dermatologists who specialize in the management of pigmented skin lesions may also use dermoscopy, a method of viewing lesions under magnification. Approximately 25% of dermatologists use dermoscopy. Although dermoscopy provides more information than unaided visual examination, mastery of the technique necessitates many years of training and experience. Proper use of dermoscopy can reduce the number of unnecessary biopsies of benign lesions, but even dermoscopy experts biopsy 3-10 benign lesions for every melanoma detected.

In contrast, MelaFind® delivers an objective assessment based on numerical scores assigned to the suspicious skin lesion under evaluation and does not require extensive physician training to operate. Further, visual clinical evaluation is limited to the surface appearance of the suspicious pigmented skin lesion, whereas MelaFind® utilizes information derived from up to 2.5 mm deep into the skin. In clinical trials to date, this objective assessment has resulted in a ratio of benign lesions biopsied to melanomas confirmed as low as almost 2 to 1.

Clinical Results to Date

To date, MelaFind® has been studied on over 5,000 skin lesions from over 3,500 patients at over 20 clinical centers. Our clinical studies have demonstrated that MelaFind® missed fewer melanomas and produced fewer false positives than were experienced by study dermatologists, who are skin cancer specialists. The performance of a diagnostic is measured in terms of "sensitivity" (the ability to detect disease when disease is present) and "specificity" (the ability to exclude disease when disease is not present). In the largest blinded trial that we have performed to date on 352 suspicious pigmented skin lesions, MelaFind® did not miss a melanoma (measured sensitivity of 100%) and achieved 48.4% specificity, compared to the study dermatologists' sensitivity of 96.4% and specificity of 28.4%.

We believe that with the assistance provided by MelaFind®, physicians could diagnose more melanomas at the earliest, curable stage, which would reduce both treatment costs and the number of unnecessary biopsies, and improve quality of life.

Our Strategy

Our objective is for MelaFind® to become an integral part of the standard of care in melanoma detection. To achieve this objective, we are pursuing the following strategy:

- **Pursue timely FDA approval of MelaFind®:** We have entered into a binding Protocol Agreement with the FDA for the conduct of the pivotal trial of MelaFind®. Management estimates that the study will commence in early 2006 at over 20 US clinical study sites, and anticipates PMA approval to commercialize MelaFind® in 2007.
- **Establish MelaFind® as the leading technology for assisting in the detection of melanoma:** We have invested considerable capital and expertise into developing our core technology platform, which is

protected by six US patents. We will continue to refine and optimize this technology to ensure that MelaFind® is the leading system for assisting in the detection of melanoma.

- **Obtain third party payor reimbursement to support our recurring revenue pricing model:** We intend to offer MelaFind® on a per patient basis, creating a recurring revenue stream. To do so, we will seek to obtain third party reimbursement as well as private pay alternatives. We are working with experts to create an evidence-based medicine evaluation model consistent with those used to support positive coverage decisions by the federal Centers for Medicare & Medicaid Services (CMS) and private payors for similar products. The value drivers in the model include the treatment and diagnostic cost savings associated with early detection (approximately $168,000 per patient) and fewer biopsies. We believe that the use of MelaFind® could result in substantial savings to the US healthcare system.
- **Commercialize MelaFind® using multiple sales and marketing strategies:** Our sales and marketing effort will focus initially on "high volume/key opinion leader" dermatologists with specialties in the diagnosis and treatment of melanoma. To enter the larger US markets of general dermatologists, plastic surgeons, and primary care physicians, and for international markets, we intend to establish partnerships with pharmaceutical and/or diagnostic device companies with an established presence in these markets.

Company Information

We were incorporated under the laws of the State of New York in 1989 and subsequently reincorporated under the laws of the State of Delaware in 1997. Our executive offices are located at 3 West Main Street, Suite 201, Irvington, New York 10533. Our telephone number is (914) 591-3783. Our websites include www.eo-sciences.com and www.melafind.com. The information contained on our websites is not a part of this prospectus and should not be relied upon. We have included our website addresses in this document as inactive textual references only.

This prospectus contains references to our US registered trademarks: MelaFind®, DIFOTI®, and the corporate logo for "eos — electro-optical sciences, inc." All other trademarks, tradenames and service marks appearing in this prospectus are the property of their respective owners.

THE OFFERING

Common stock offered by us	l shares
Common stock outstanding after the offering	l shares
Use of proceeds	We estimate that our net proceeds from this offering will be approximately $ l million at an assumed initial public offering price of $ l per share, which is the mid-point of our filing range, after deducting estimated underwriting discounts and commissions and offering expenses payable by us. We intend to use these net proceeds to fund our research and development activities, including our clinical studies, to build our sales and marketing capabilities, and for general corporate purposes, including working capital needs, facilities expansion and potential acquisitions. See "Use of Proceeds."
Risk factors	You should read the "Risk Factors" section of this prospectus for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed NASDAQ National Market symbol	MELA

The number of shares of our common stock to be outstanding after this offering is based on 6,513,164 shares outstanding as of May 15, 2005, and unless otherwise indicated, excludes:

- 899,875 shares of common stock issuable as of the date of this prospectus upon the exercise of outstanding stock options under our 2003 Stock Incentive Plan and our 1996 Stock Option Plan, respectively, at a weighted average exercise price of approximately $0.63 per share, which amount is 54,391 shares less than the numbe of shares issuable under such option plans as of March 31, 2005 due to the effect of a formula-based option granted to our President and Chief Executive Officer — see "Management — Employment Agreement";
- up to 1,000,000 shares of common stock reserved for future grants under our 2005 Stock Incentive Plan;
- 75,000 shares of common stock issuable upon exercise of outstanding warrants to purchase common stock at an exercise price of $7.00 per share;
- 73,280 shares of common stock issuable upon exercise of outstanding warrants to purchase our series C convertible preferred stock (assuming conversion of our series C convertible preferred stock) at an exercise price of $4.52 per share; and
- l shares of common stock issuable upon exercise of warrants to be issued to the underwriters upon completion of this offering at an exercise price equal to 125% of the public offering price per share.

Unless we specifically state otherwise, all information in this prospectus assumes:

- that all outstanding shares of our series A convertible preferred stock, series B convertible preferred stock and series C convertible preferred stock are converted into shares of our common stock immediately prior to completion of this offering;
- that all outstanding warrants to purchase our common stock with an exercise price of $13.00 per share have been exchanged for our common stock based on an exchange rate of one share of common stock for every two shares of common stock purchasable under such warrants in a cashless exchange. See the full discussion in "Related Party Transactions — Warrants to Purchase Common Stock";
- no exercise of the underwriters' over-allotment option;
- the adoption of our fourth amended and restated certificate of incorporation and third amended and restated bylaws; and
- a 1-for-2 reverse stock split of our common stock which was approved by our board of directors on May 13, 2005, effective upon the earlier of the conversion of our preferred stock or September 30, 2005.

SUMMARY FINANCIAL DATA

The following summary financial data for the fiscal years ended December 31, 2002, 2003 and 2004 have been derived from our historical audited financial statements. The summary financial data for the three month periods ended March 31, 2004 and 2005 have been derived from our unaudited financial statements. The unaudited summary financial data include, in our opinion, all adjustments, consisting only of normal, recurring adjustments, necessary to present fairly the financial position and results of operations for the periods presented. Our historical results for any prior or interim period are not necessarily indicative of results to be expected for a full fiscal year or for any future period. The summary financial data shown below include revenues and related expenses for our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities. We decided to discontinue all operations associated with our DIFOTI® product, effective as of April 5, 2005, in order to focus our resources on the development and commercialization of MelaFind®. See the footnote to the Financial Statements relating to subsequent events included elsewhere in this prospectus. You should read this information together with our financial statements and the related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this prospectus.

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(unaudited)	
	(In thousands, except share and per share data)				
Statement of Operations Data:					
Revenue from DIFOTI® sales, net	$ 143	$ 375	$ 364	$ 91	$ 88
Revenue from grants	547	—	—	—	—
Total revenues	690	375	364	91	88
Cost of goods sold	650	83	166	20	8
Gross profit	40	292	198	71	80
Operating expenses:					
Research and development	404	828	1,892	307	636
Selling, general and administrative	769	1,339	1,858	533	713
Total operating expenses	1,173	2,167	3,750	840	1,349
Loss from operations	(1,133)	(1,875)	(3,552)	(769)	(1,269)
Interest (income)/expense	8	75	67	1	(26)
Net loss	(1,141)	(1,950)	(3,619)	(770)	(1,243)
Preferred stock deemed dividends	214	322	676	111	362
Preferred stock accretion	180	25	323	7	421
Stock distribution on series B preferred shares	—	102	—	—	—
Net loss attributable to common stockholders	$ (1,535)	$ (2,399)	$ (4,618)	$ (888)	$ (2,026)
Basic and diluted net loss per share	$ (1.00)	$ (1.49)	$ (2.61)	$ (0.53)	$ (1.12)
Basic and diluted weighted average shares outstanding	1,534,760	1,614,897	1,766,608	1,684,760	1,809,758
Pro forma basic and diluted net loss per common share (unaudited)(1)			$ (0.91)		$ (0.19)
Pro forma basic and diluted weighted average number of common shares outstanding (unaudited)(1)			3,967,024		6,513,164

(1) Pro forma basic and diluted net loss per common share reflects the effect of the assumed conversion of the company's preferred stock, as if this offering had occurred at the date of original issuance into 3,398,105 shares of our common stock for the year ended December 31, 2004 and three months ended March 31, 2005 which will occur upon closing of this public offering. Additionally, it is assumed that 2,610,643 warrants to purchase the company's common stock will be exchanged for a total of 1,305,321 shares of the company's common stock based on an exchange ratio of one share of our common stock for every two shares of our common stock purchasable under the warrants and will occur prior to the closing of this offering. The net loss attributable to our common stockholders used in the computation of basic and diluted net loss per share to compute the unaudited pro forma net loss attributable to common stockholders, has been adjusted to reverse the accretion on our preferred stock and also excludes the preferred stock dividends for the respective period.

The following table presents summary balance sheet data, derived from our historical audited financial statements, as of December 31, 2003 and December 31, 2004. The table also presents summary balance sheet data, derived from our historical unaudited financial statements, as of March 31, 2005:

- On an actual basis; and
- On an as adjusted basis to give effect to (1) the conversion of all outstanding shares of our convertible preferred stock into an aggregate of 3,398,105 shares of common stock upon the completion of this offering; (2) the exchange of 2,610,643 warrants to purchase the company's common stock for a total of 1,305,321 shares of the company's common stock based on an exchange ratio of one share of our common stock for every two shares of our common stock purchaseable under the warrants that is assumed to occur prior to the closing of this offering; and (3) the sale of l shares of common stock in this offering at an assumed initial public offering price of $ l per share, after deducting estimated underwriting discounts and commissions and offering expenses paid and payable by us.

	As of December 31,		As of March 31, 2005	
	2003	2004		
	Actual	Actual	Actual	Pro Forma As Adjusted
	(In thousands)		(unaudited)	
Balance sheet data:				
Cash, cash equivalents and marketable securities	$ 117	$ 6,703	$ 5,300	l
Working capital	(433)	6,122	4,919	l
Total assets	432	7,096	5,734	l
Total liabilities	650	691	493	l
Redeemable convertible preferred stock	4,067	8,585	9,006	l
Total stockholders' (deficiency)/equity	(4,285)	(2,180)	(3,765)	l

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as the other information in this prospectus, before deciding whether to invest in shares of our common stock. If any of the following risks actually occur, our business, financial condition and results of operations would suffer. In that case, the trading price of our common stock would likely decline and you might lose all or part of your investment in our common stock. The risks described below are not the only ones we face. Additional risks that we currently do not know about or that we currently believe to be immaterial may also impair our business, financial conditions and results of operations.

Risks Relating to Our Business

We currently do not have, and may never develop, any commercialized products.

We currently do not have any commercialized products or any significant source of revenue. We have invested substantially all of our time and resources over the last five years in developing MelaFind®. MelaFind® will require additional development, clinical evaluation, regulatory approval, significant marketing efforts and substantial additional investment before it can provide us with any revenue. Our efforts may not lead to commercially successful products for a number of reasons, including:

- we may not be able to obtain regulatory approvals for MelaFind®, or the approved indication may be narrower than we seek;
- MelaFind® may not prove to be safe and effective in clinical trials;
- physicians may not receive any reimbursement from third-party payors, or the level of reimbursement may be insufficient to support widespread adoption of MelaFind®;
- we may experience delays in our development program;
- any products that are approved may not be accepted in the marketplace by physicians or patients;
- we may not have adequate financial or other resources to complete the development and commercialization of MelaFind® or other products;
- we may not be able to manufacture our products in commercial quantities or at an acceptable cost; and
- rapid technological change may make our technology and products obsolete.

We do not expect to be able to commercialize MelaFind® before 2007. If we are unable to develop, obtain regulatory approval for or successfully commercialize MelaFind®, we will be unable to generate revenue.

We have not received, and may never receive, FDA approval to market MelaFind®.

We do not have the necessary regulatory approvals to market MelaFind® in the US or in any foreign market. We have not filed, and currently do not have plans to file, for regulatory approval in any foreign market. We plan initially to launch MelaFind®, once approved, in the US. The regulatory approval process for MelaFind® in the US involves, among other things, successfully completing clinical trials and obtaining PMA approval from the FDA. We commenced the PMA application process for MelaFind® by filing a proposed outline for a Modular PMA on September 30, 2002. The PMA process requires us to prove the safety and effectiveness of MelaFind® to the FDA's satisfaction. This process is expensive and uncertain, and requires detailed and comprehensive scientific and human clinical data. FDA review may take years after a PMA application is filed. The FDA may never grant approval. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- MelaFind® may not be safe or effective to the FDA's satisfaction;
- the data from our pre-clinical studies and clinical trials may be insufficient to support approval;
- the manufacturing process or facilities we use may not meet applicable requirements; and

• changes in FDA approval policies or adoption of new regulations may require additional data.

No precedent has been established for FDA approval of a device such as MelaFind® to assist in determining the appropriateness of biopsies of suspicious pigmented skin lesions. Before submitting a PMA application (the final module), we must successfully complete a pivotal clinical trial to demonstrate that MelaFind® is safe and effective. Product development, including clinical trials, is a long, expensive and uncertain process, and is subject to delays and failure at any stage. Furthermore, the data obtained from the trial may be inadequate to support approval of a PMA application. While we obtained a Protocol Agreement from the FDA, FDA approval of a Protocol Agreement does not mean that the FDA will consider the data gathered in the trial sufficient to support approval of a PMA application, even if the trial's intended endpoints are achieved. There may be unexpected findings, particularly those that may only become evident from the larger scale of the pivotal clinical trial, as compared with the smaller scale tests done to date. For example, we initiated a clinical trial and encountered several technical problems which required us to refine the MelaFind® system. The data obtained in the pivotal trial may not be sufficient to support the anticipated indication for use, and may not support a more limited indication for use. The occurrence of unexpected findings in connection with the pivotal trial or any subsequent clinical trial required by the FDA may prevent or delay obtaining PMA approval, and may adversely affect coverage or reimbursement determinations. The FDA may also determine that additional clinical trials are necessary, in which case the PMA approval may be delayed for several months or even years while the trials are conducted and the data acquired are submitted in an amendment to the PMA. If we are unable to complete the clinical trials necessary to successfully support the MelaFind® PMA application, our ability to commercialize MelaFind®, and our business, financial condition, and results of operations would be materially adversely affected, thereby threatening our ability to continue operations.

If MelaFind® is approved by the FDA, it may be approved only for narrow indications.

Even if approved, MelaFind® may not be approved for the indications that are necessary or desirable for successful commercialization. Our preference is to obtain a broad indication for use in diagnosing almost all pigmented melanomas (other than those on palms, soles of the feet, in or near the eye, and inaccessible areas such as the edge of the nose). The final MelaFind® lesion classifier should be able to identify the maximum number of types of melanoma possible. The indications for use must specify those lesion types for which the classifier has not been trained. Approximately five percent of melanoma lesions may be amelanotic, meaning they are not pigmented. These lesions cannot be differentiated by MelaFind®, which will be restricted to pigmented lesions. Approximately ten percent of pigmented melanoma lesions are of the nodular type. If nodular melanoma lesions are not sufficiently well-represented in the MelaFind® training database, the classifier may not differentiate nodular melanomas from non-melanomas with sufficient sensitivity and specificity. If we restrict the indications for use of MelaFind® to exclude certain melanoma lesion types, in addition to the other restrictions, then the size of the market for MelaFind® and the rate of acceptance of MelaFind® by physicians may be adversely affected.

If we wish to modify MelaFind® after receiving FDA approval, including changes in indications or other modifications that could affect safety and effectiveness, additional approvals could be required from the FDA. We may be required to submit extensive pre-clinical and clinical data, depending on the nature of the changes. Any request by the FDA for additional data, or any requirement by the FDA that we conduct additional clinical studies, could delay the commercialization of MelaFind® and require us to make substantial additional research, development and other expenditures. We may not obtain the necessary regulatory approvals to market MelaFind® in the US or anywhere else. Any delay in, or failure to receive or maintain, approval for MelaFind® could prevent us from generating revenue or achieving profitability, and our business, financial condition, and results of operations would be materially adversely affected.

MelaFind® may not be commercially viable if we fail to obtain an adequate level of reimbursement by Medicare and other third party payors. The markets for MelaFind® may also be limited by the indications for which its use may be reimbursed.

The availability of medical insurance coverage and reimbursement for newly approved medical devices is uncertain. In the US, physicians and other healthcare providers performing biopsies for suspicious skin lesions are generally reimbursed for all or part of the cost of the diagnosis and biopsy by Medicare, Medicaid, or other third-party payors. The commercial success of MelaFind® in both domestic and international markets will significantly depend on whether third-party coverage and reimbursement are available for services involving MelaFind®. Medicare, Medicaid, health maintenance organizations and other third-party payors are increasingly attempting to contain healthcare costs by limiting both the scope of coverage and the level of reimbursement of new medical devices, and as a result, they may not cover or provide adequate payment for the use of MelaFind®. In order to obtain satisfactory reimbursement arrangements, we may have to agree to a fee or sales price lower than the fee or sales price we might otherwise charge. Even if Medicare and other third-party payors decide to cover procedures involving our product, we cannot be certain that the reimbursement levels will be adequate. Accordingly, even if MelaFind® or future products we develop are approved for commercial sale, unless government and other third-party payors provide adequate coverage and reimbursement for our products, some physicians may be discouraged from using them, and our sales would suffer.

Medicare reimburses for medical devices in a variety of ways, depending on where and how the device is used. However, Medicare only provides reimbursement if CMS determines that the device should be covered and that the use of the device is consistent with the coverage criteria. A coverage determination can be made at the local level by the Medicare administrative contractor (formerly called carriers and fiscal intermediaries), a private contractor that processes and pays claims on behalf of CMS for the geographic area where the services were rendered, or at the national level by CMS through a national coverage determination. There are new statutory provisions intended to facilitate coverage determinations for new technologies, but it is unclear how these new provisions will be implemented. Coverage presupposes that the device has been cleared or approved by the FDA and further, that the coverage will be no broader than the approved intended uses of the device as approved or cleared by the FDA, but coverage can be narrower. A coverage determination may be so limited that relatively few patients will qualify for a covered use of the device. Should a very narrow coverage determination be made for MelaFind®, it may undermine the commercial viability of MelaFind®.

Obtaining a coverage determination, whether local or national, is a time-consuming, expensive and highly uncertain proposition, especially for a new technology, and inconsistent local determinations are possible. On average, according to an industry report, Medicare coverage determinations for medical devices lag 15 months to five years or more behind FDA approval for that device. The Medicare statutory framework is also subject to administrative rulings, interpretations and discretion that affect the amount and timing of reimbursement made under Medicare. Medicaid coverage determinations and reimbursement levels are determined on a state by state basis, because Medicaid, unlike Medicare, is administered by the states under a state plan with the Secretary of the US Department of Health and Human Services (HHS). Medicaid generally reimburses at lower levels than Medicare. Moreover, Medicaid programs and private insurers are frequently influenced by Medicare coverage determinations.

Any adverse results in our clinical trials, or difficulties in conducting our clinical trials, could have a material adverse effect on our business.

Clinical studies in the US have been ongoing for over five years, and we have a Protocol Agreement with the FDA, but we have not conducted the pivotal clinical trial required for PMA approval. We initiated a trial under the terms of the Protocol Agreement at the end of 2004. However, technical operational issues with the systems were experienced, requiring further refinement. We currently anticipate commencing the pivotal clinical trial in early 2006. The pivotal clinical trial and supporting clinical studies will require the involvement of larger numbers of clinical sites than we have previously engaged at any single time, and the recruitment of large numbers of patients. If the clinical sites, which enroll patients on a best efforts basis, do not provide

cases at rates anticipated for any reason (such as, for example, lower than forecasted clinical site productivity), we may face delays or may be unable to complete the development of MelaFind®.

Risk of delay in product development.

We could encounter delays in our pivotal trial or in obtaining PMA approval because of a number of factors. We will require the receipt of all information specified in our Protocol Agreement on the required number of melanomas before the pivotal clinical trial can be concluded. The MelaFind® classifier will then be utilized to evaluate the lesions acquired during the trial, and the results will be analyzed to determine if we have achieved the endpoints specified in the Protocol Agreement.

The final training of the classifier, required to be completed before the classifier is utilized as described above, is expected to take approximately two months. Accordingly, the classifier must be ready for final training two months before the end of the pivotal trial. For the classifier to be ready for final training, approximately 300 melanoma lesions are targeted to have been received. Therefore, in addition to acquiring the melanoma lesions required to complete the pivotal trial (approximately 100), we must have completed the acquisition of approximately 300 training melanoma lesions on schedule. Currently, approximately 225 melanoma lesions are in the training database. The current classifier has been trained on 113 of these melanoma lesions.

Our schedule for the acquisition of these lesions is based upon the projected numbers of imaging devices to be located at participating sites, the projected productivity of those sites in terms of melanomas and other lesions biopsied per month, and the projected efficiency of the study pathologists in classifying the lesion slides presented for dermatohistopathological analysis and reporting their results. If we are unable to produce and maintain a sufficient number of imaging devices at participating sites, if the clinicians do not maintain sufficient productivity, or if the pathologists do not produce reports with sufficient efficiency, then our ability to maintain our schedule will be adversely affected, the start or conclusion of the pivotal trial may be delayed, and the submission of the completed PMA will be delayed.

To date, the lesion images in the training database have been acquired using first-generation hand-held devices, which also extract data from the lesions that are used by the classifiers. Pre-commercialization hand-held devices are being developed for use in the pivotal trial. If the lesion data obtained with pre-commercialization devices are not consistent with data from the first generation hand-held devices, the classifier will need to be trained solely on lesions imaged using only one or the other generation of hand-held devices. Were this need to arise, significant delay and expense could be incurred, which could jeopardize our ability to complete the development of MelaFind®.

We have incurred losses for a number of years, and anticipate that we will incur continued losses for the foreseeable future.

We began operations in December 1989. At that time we provided research services, mostly to US government agencies, on classified projects. We have financed our operations since 1999 primarily through private placements of our equity securities, and have devoted substantially all of our resources to research and development relating to MelaFind®. Our net loss for the three months ended March 31, 2005 was $1.2 million, and as of March 31, 2005, we had an accumulated deficit of approximately $15.1 million. We expect our research and development expenses to increase in connection with our clinical trials and other development activities related to MelaFind®. If we receive PMA approval for MelaFind® from the FDA, we expect to incur significant sales and marketing expenses, and manufacturing expenses. Additionally, if we complete our initial public offering, we expect that our general and administrative expenses will increase due to the additional operational and regulatory burdens applicable to public companies. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. These losses, among other things, have had and will continue to have an adverse effect on our stockholders' equity.

We expect to operate in a highly competitive market, we may face competition from large, well-established medical device manufacturers with significant resources, and we may not be able to compete effectively.

We do not know of any product possessing the diagnostic assistance capabilities of MelaFind®. We believe that electro-optical products designed to enhance the visualization and analysis of potential melanomas have been approved or are under development by: Welch Allyn, Inc.; Heine Optotechnik; 3Gen, LLC; Derma Medical Systems, Inc.; Medical High Technologies S.p.A.; ZN Vision Technologies AG; Polartechnics, Ltd.; Astron Clinica, Ltd.; LINOS Photonics, Inc.; and Biomips Engineering. The broader market for precision optical imaging devices used for medical diagnosis is intensely competitive, subject to rapid change, and significantly affected by new product introductions and other market activities of industry participants. If our products are approved for marketing, we will potentially be subject to competition from major optical imaging companies, such as: General Electric Co.; Siemens AG; Bayer AG; Eastman Kodak Company; Welch Allyn, Inc.; Olympus Corporation; Carl Zeiss AG Deutschland; and others, each of which manufactures and markets precision optical imaging products for the medical market, and could decide to develop or acquire a product to compete with MelaFind®. These companies enjoy numerous competitive advantages, including:

- significantly greater name recognition;
- established relations with healthcare professionals, customers and third-party payors;
- established distribution networks;
- additional lines of products, and the ability to offer rebates, higher discounts or incentives to gain a competitive advantage;
- greater experience in conducting research and development, manufacturing, clinical trials, obtaining regulatory approval for products, and marketing approved products; and
- greater financial and human resources for product development, sales and marketing, and patent litigation.

As a result, we may not be able to compete effectively against these companies or their products.

Technological breakthroughs in the diagnosis or treatment of melanoma could render MelaFind® obsolete.

The precision optical imaging field is subject to rapid technological change and product innovation. MelaFind® is based on our proprietary technology, but a number of companies and medical researchers are pursuing new technologies. Companies in the medical device industry with significantly greater financial, technical, research, marketing, sales and distribution and other resources have expertise and interest in the exploitation of computer-aided diagnosis, medical imaging, and other technologies MelaFind® utilizes. Some of these companies are working on potentially competing products or therapies, including confocal microscopy, various forms of spectroscopy, other imaging modalities, and molecular and genetic screening tests. In addition, the National Institutes of Health and other supporters of cancer research are presumptively seeking ways to improve the diagnosis or treatment of melanoma by sponsoring corporate and academic research. There can be no assurance that one or more of these companies will not succeed in developing or marketing technologies and products or services that demonstrate better safety or effectiveness, superior clinical results, greater ease of use or lower cost than MelaFind®, or that such competitors will not succeed in obtaining regulatory approval for introducing or commercializing any such products or services prior to us. FDA approval of a commercially viable alternative to MelaFind® produced by a competitor could significantly reduce market acceptance of MelaFind®. Any of the above competitive developments could have a material adverse effect on our business, financial condition, and results of operations. There is no assurance that products, services, or technologies introduced prior to or subsequent to the commercialization of MelaFind® will not render MelaFind® less marketable or obsolete.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.

We rely on clinical investigators and clinical sites, some of which are private practices, and some of which are research university or government-affiliated, to enroll patients in our clinical trials. We rely on: pathologists and pathology laboratories; a contract research organization to assist in monitoring, collection of data, and ensuring FDA Good Clinical Practices (GCP) are observed at our sites; a consultant biostatistician; and other third parties to manage the trial and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites and other third parties may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, or if the clinical sites fail to comply adequately with the clinical protocols, we will be unable to complete these trials, which could prevent us from obtaining regulatory approvals for MelaFind®. Our agreements with clinical investigators and clinical sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain are compromised due to their failure to adhere to our clinical protocols or for other reasons, our clinical trials may be extended, delayed or terminated, and we may be unable to obtain regulatory approval for, or successfully commercialize, MelaFind®.

In addition to the foregoing, our clinical trial may be delayed or halted, or be inadequate to support approval of a PMA application, for numerous other reasons, including, but not limited to, the following:

- the FDA, an Institutional Review Board (IRB), or other regulatory authorities place our clinical trial on hold;
- patients do not enroll in clinical trials at the rate we expect;
- patient follow-up is not at the rate we expect;
- IRBs and third-party clinical investigators may delay or reject our trial protocol;
- third-party organizations do not perform data collection and analysis in a timely or accurate manner;
- regulatory inspections of our clinical trials or manufacturing facilities may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials, or invalidate our clinical trials;
- changes in governmental regulations or administrative actions; and
- the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness.

If MelaFind® is approved for reimbursement, we anticipate experiencing significant pressures on pricing.

Even if Medicare covers a device for certain uses, that does not mean that the level of reimbursement will be sufficient for commercial success. We expect to experience pricing pressures in connection with the commercialization of MelaFind® and our future products due to efforts by private and government-funded payors to reduce or limit the growth of healthcare costs, the increasing influence of health maintenance organizations, and additional legislative proposals to reduce or limit increase in public funding for healthcare services. Private payors, including managed care payors, increasingly are demanding discounted fee structures and the assumption by healthcare providers of all or a portion of the financial risk. Efforts to impose greater discounts and more stringent cost controls upon healthcare providers by private and public payors are expected to continue. Payors frequently review their coverage policies for existing and new diagnostic tools and can, sometimes without advance notice, deny or change their coverage policies. Significant limits on the scope of services covered or on reimbursement rates and fees on those services that are covered could have a

material adverse effect on our ability to commercialize MelaFind® and therefore, on our liquidity and our business, financial condition, and results of operations.

In some foreign markets, which we may seek to enter in the future, pricing and profitability of medical devices are subject to government control. In the US, we expect that there will continue to be federal and state proposals for similar controls. Also, the trends toward managed healthcare in the US and proposed legislation intended to control the cost of publicly funded healthcare programs could significantly influence the purchase of healthcare services and products, and may force us to reduce prices for MelaFind® or result in the exclusion of MelaFind® from reimbursement programs.

MelaFind® may never achieve market acceptance even if we obtain regulatory approvals.

To date, only those patients who were treated by physicians involved in our clinical trials have been evaluated using MelaFind® and even if we obtain regulatory approval patients with suspicious lesions and physicians evaluating suspicious lesions may not endorse MelaFind®. Physicians tend to be slow to change their diagnostic and medical treatment practices because of perceived liability risks arising from the use of new products and the uncertainty of third party reimbursement. Physicians may not utilize MelaFind® until there is long-term clinical evidence to convince them to alter their existing methods of diagnosing or evaluating suspicious lesions and there are recommendations from prominent physicians that MelaFind® is effective. We cannot predict the speed at which physicians may adopt the use of MelaFind®. If MelaFind® receives the appropriate regulatory approvals but does not achieve an adequate level of acceptance by patients, physicians and healthcare payors, we may not generate significant product revenue and we may not become profitable. The degree of market acceptance of MelaFind® will depend on a number of factors, including:

- perceived effectiveness of MelaFind®;
- convenience of use;
- cost of the use of MelaFind®;
- availability and adequacy of third-party coverage or reimbursement;
- approved indications and product labeling;
- publicity concerning MelaFind® or competitive products;
- potential advantages over alternative diagnostic methodologies;
- introduction and acceptance of competing products or technologies; and
- extent and success of our sales, marketing and distribution efforts.

The identification and screening of melanomas is now dominated by visual clinical evaluation, with a minority of dermatologists using dermoscopy. Even if MelaFind® proves to be as effective as visual inspection by an expert dermatologist, and if all approvals are obtained, the success of MelaFind® will depend upon the acceptance by dermatologists and other physicians who perform skin examinations and treat skin disorders, including industry opinion leaders, that the diagnostic information provided by MelaFind® is medically useful and reliable. We will be subject to intense scrutiny before physicians will be comfortable incorporating MelaFind® in their diagnostic approaches. We believe that recommendations by respected physicians will be essential for the development and successful marketing of MelaFind®, and there can be no assurance that any such recommendations will be obtained. To date, the medical community outside the limited circle of certain dermatologists specializing in melanoma has had little exposure to us and MelaFind®. Because the medical community is often skeptical of new companies and new technologies, we may be unable to gain access to potential customers in order to demonstrate the operation and effectiveness of MelaFind®. Even if we gain access to potential customers, no assurance can be given that members of the dermatological, or later the general practice, medical community will perceive a need for or accept MelaFind®. In particular, given the potentially fatal consequences of failing to detect melanoma at the early, curable stages, practitioners may remain reluctant to rely upon MelaFind® even after we receive approval from the FDA for marketing the product.

Any of the foregoing factors, or other currently unforeseen factors, could limit or detract from market acceptance of MelaFind®. Insufficient market acceptance of MelaFind® would have a material adverse effect on our business, financial condition and results of operations.

We may be unable to complete the development and commercialization of MelaFind® or other products without additional funding.

We currently believe that our available cash, cash equivalents and marketable securities, together with our net proceeds from this offering, will be sufficient to fund our anticipated levels of operations through mid 2008. However, our operations have consumed substantial amounts of cash for each of the last six years. We expect to continue to spend substantial amounts on research and development, including conducting a clinical trial for MelaFind®. Even before we receive approval to market MelaFind®, we expect to spend significant additional amounts to ready the product for commercial distribution following FDA approval, including development of a direct sales force and expansion of manufacturing capacity. We expect that our cash used by operations will increase significantly in each of the next several years, and should we encounter any material delays or impediments, we may need additional funds to complete the development and commercialization of MelaFind®. Any additional financing may be dilutive to stockholders, or may require us to grant a lender a security interest in our assets. The amount of funding we will need will depend on many factors, including:

- the schedule, costs, and results of our clinical trials;
- the success of our research and development efforts;
- the costs and timing of regulatory approval;
- reimbursement amounts for the use of MelaFind® that we are able to obtain from Medicare and third party payors, or the amount of direct payments we are able to obtain from patients and/or physicians utilizing MelaFind®;
- the cost of commercialization activities, including product marketing and building a domestic direct sales force;
- the emergence of competing or complementary technological developments;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other rights, including litigation costs and the results of such litigation;
- the costs involved in defending any patent infringement actions brought against us by third parties; and
- our ability to establish and maintain any collaborative, licensing or other arrangements, and the terms and timing of any such arrangements.

Additional financing may not be available to us when we need it, or it may not be available on favorable terms. If we are unable to obtain adequate financing on a timely basis, we may be required to significantly curtail or cease one or more of our development and marketing programs. We could be required to seek funds through arrangements with collaborators or others that may require us to relinquish rights to some of our technologies, product candidates or products that we would otherwise pursue on our own. We also may have to reduce marketing, customer support and other resources devoted to our products. If we raise additional funds by issuing equity securities, our then-existing stockholders will experience ownership dilution, could experience declines in our share price and the terms of any new equity securities may have preferences over our common stock.

If we are unable to establish sales, marketing and distribution capabilities or enter into and maintain arrangements with third parties to sell, market and distribute MelaFind®, our business may be harmed.

We do not have a sales organization, and have no experience as a company in the marketing and distribution of devices such as MelaFind®. To achieve commercial success for MelaFind®, we must develop a sales and marketing force and enter into arrangements with others to market and sell our products. Following product approval, we currently plan to establish a small direct sales force to market MelaFind® in the US,

focused on introducing it at high volume dermatologists' offices and training their staff in its use, but we have not made any final determinations regarding the use of a particular marketing channel. Developing such a sales force is expensive and time consuming, and could delay or limit the success of any product launch. We may not be able to develop this capacity on a timely basis or at all. Qualified direct sales personnel with experience in the medical device market are in high demand, and there is no assurance that we will be able to hire or retain an effective direct sales team. Similarly, qualified, independent medical device representatives both within and outside the US are in high demand, and we may not be able to build an effective network for the distribution of our product through such representatives. We have no assurance that we will be able to enter into contracts with representatives on terms acceptable or reasonable to us. Similarly, there is no assurance that we will be able to build an alternate distribution framework, should we attempt to do so.

We will need to contract with third parties in order to sell and install our products in larger markets, including non-specialist dermatologists and primary care physicians. To the extent that we enter into arrangements with third parties to perform marketing and distribution services in the US, our product revenue could be lower and our costs higher than if we directly marketed MelaFind®. Furthermore, to the extent that we enter into co-promotion or other marketing and sales arrangements with other companies, any revenue received will depend on the skills and efforts of others, and we do not know whether these efforts will be successful. If we are unable to establish and maintain adequate sales, marketing and distribution capabilities, independently or with others, we will not be able to generate product revenue, and may not become profitable.

We have limited manufacturing capabilities and manufacturing personnel, and if our manufacturing capabilities are insufficient to produce an adequate supply of MelaFind®, our growth could be limited and our business could be harmed.

We have not yet completed the development and testing of MelaFind®, and as a result have no experience in manufacturing MelaFind® for commercial distribution. We currently have limited resources, facilities and experience to commercially manufacture MelaFind®. In order to produce MelaFind® in the quantities we anticipate to meet market demand, we will need to increase our manufacturing capacity by a significant factor over the current level, or procure manufacturing services from others. There are technical challenges to increasing manufacturing capacity, including equipment design and automation, material procurement, problems with production yields, and quality control and assurance. Developing commercial-scale manufacturing facilities that meet FDA requirements would require the investment of substantial additional funds and the hiring and retaining of additional management and technical personnel who have the necessary manufacturing experience.

We currently plan to outsource certain production aspects to contract manufacturers. Any difficulties in the ability of third-party manufacturers to supply devices of the quality, at the times, and in the quantities we need, could have a material adverse effect on our business, financial condition, and results of operations. Similarly, if we enter into contracts for third party manufacture of our devices, any revenue received will depend on the skills and efforts of others, and we do not know whether these efforts will be successful. Manufacturers often encounter difficulties in scaling up production of new products, including problems involving product yields, controlling and anticipating product costs, quality control and assurance, component supply, and shortages of qualified personnel. We cannot assure you that the third-party contract manufacturers with whom we are developing relationships will have or sustain the ability to produce the quantities of MelaFind® needed for development or commercial sales, or will be willing to do so at prices that allow MelaFind® to compete successfully in the market.

Assuming that MelaFind® receives regulatory approval, if we are unable to manufacture or obtain a sufficient supply of product, maintain control over expenses, or otherwise adapt to anticipated growth, or if we underestimate growth, we may not have the capability to satisfy market demand, and our business will suffer. Additionally, if MelaFind® receives regulatory approval and we then need to make manufacturing changes, we may need to obtain additional approval for these changes.

MelaFind® is complex and may contain undetected design defects and errors when first introduced, or errors that may be introduced when enhancements are released. Such defects and errors may occur despite

our testing, and may not be discovered until after our devices have been shipped to and used by our customers. The existence of these defects and errors could result in costly repairs, returns of devices, diversion of development resources and damage to our reputation in the marketplace. Any of these conditions could have a material adverse impact on our business, financial condition and results of operations. In addition, if we contract with third-party manufacturers for the production of our products, these manufacturers may inadvertently produce devices that vary from devices we have produced in unpredictable ways that cause adverse consequences.

Our manufacturing operations are dependent upon third-party suppliers, making us vulnerable to supply problems and price fluctuations, which could harm our business. We anticipate contracting for final device assembly and integration, but no contract for such services on a commercial basis has yet been procured.

Our manufacturing efforts currently rely on FillFactory, a subsidiary of Cypress Semiconductor Corp., to manufacture and supply the complementary metal oxide semiconductor sensor in MelaFind®, on Pracownia Optyki Instrumentalnej (Optyka) for lens elements and on Fairchild Semiconductor Corp., Panasonic Corp., and others for light-emitting diodes, or LEDs, printed circuit boards, and other elements or components of our devices. We have written agreements with several of these vendors, under which the vendor is obligated to perform services or produce components for us. There can be no assurance that these third parties will meet their obligations under the agreements. Each of these suppliers is a sole-source supplier. Our contract manufacturers also rely on sole-source suppliers to manufacture some of the components used in our products. Our manufacturers and suppliers may encounter problems during manufacturing due to a variety of reasons, including failure to follow specific protocols and procedures, failure to comply with applicable regulations, equipment malfunction and environmental factors, any of which could delay or impede their ability to meet our demand. Our reliance on these outside manufacturers and suppliers also subjects us to other risks that could harm our business, including:

- suppliers may make errors in manufacturing components that could negatively affect the effectiveness or safety of our products, or cause delays in shipment of our products;
- we may not be able to obtain adequate supply in a timely manner or on commercially reasonable terms;
- we may have difficulty locating and qualifying alternative suppliers for our sole-source suppliers;
- switching components may require product redesign and submission to the FDA of a PMA supplement or possibly a separate PMA, either of which could significantly delay production;
- our suppliers manufacture products for a range of customers, and fluctuations in demand for the products these suppliers manufacture for others may affect their ability to deliver components to us in a timely manner; and
- our suppliers may encounter financial hardships unrelated to our demand for components, which could inhibit their ability to fulfill our orders and meet our requirements.

Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders.

We have entered into a development agreement with ASKION GmbH (ASKION) to complete developmental engineering and testing of our hand-held imaging device, and have entered into a non-binding Letter of Intent with ASKION to assemble the components and produce initial quantities of our hand-held imaging devices for clinical trials. We intend to enter into a contract for commercial production of the hand-held imaging devices once specifications for MelaFind® have been finalized, but we may not be able to enter such an agreement on mutually acceptable terms. Failure to enter into such an agreement with ASKION would require us to expand our own manufacturing facilities or obtain such services elsewhere. Our planned reliance upon an outside provider for assembly and production services subjects us to the risk of adverse consequences from delays and defects caused by the failure of such outside supplier to meet its contractual

obligations. The failure by us or our supplier to produce a sufficient number of hand-held imaging devices that can operate according to our specifications could delay the pivotal clinical trial and/or the commercial sale of MelaFind®, and would adversely affect both our ability to successfully commercialize MelaFind® and our business, financial condition and results of operations.

We will not be able to sell MelaFind® unless and until its design is verified and validated in accordance with current good manufacturing practices as set forth in the US medical device Quality System Regulation.

We are in the process, but have not yet successfully completed, all the steps necessary to verify and validate the design of the MelaFind® system that are required to be performed prior to commercialization. If we are delayed or unable to complete verification and validation successfully, we will not be able to sell MelaFind®, and we will not be able to meet our plans for the commercialization of MelaFind® in 2007.

Assuming that regulatory approval of MelaFind® is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed, or may contain requirements for costly post-marketing testing and surveillance to monitor the safety or effectiveness of the device. Later discovery of previously unknown problems with MelaFind®, including manufacturing problems, or failure to comply with regulatory requirements such as the Quality System Regulation (QSR), may result in restrictions on MelaFind® or its manufacturing processes, withdrawal of MelaFind® from the market, patient or physician notification, voluntary or mandatory recalls, fines, withdrawal of regulatory approvals, refusal to approve pending applications or supplements to approved applications, refusal to permit the import or export of our products, product seizures, injunctions or the imposition of civil or criminal penalties. Should any of these enforcement actions occur, our business, financial condition and results of operations could be materially and adversely affected.

Assuming that MelaFind® is approved by regulatory authorities, if we or our suppliers fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with MelaFind®, it could be subject to restrictions or withdrawal from the market.

Any product for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data and promotional activities for such product, will be subject to continuous review and periodic inspections by the FDA and other regulatory bodies. In particular, we and our suppliers are required to comply with the QSR and other regulations which cover the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage, promotion, distribution, and shipping of MelaFind®, and with record keeping practices. We also will be subject to ongoing FDA requirements, including required submissions of safety and other post-market information and reports and registration and listing requirements. To the extent that we contract with third parties to manufacture some of our products, our manufacturers will be required to adhere to current Good Manufacturing Practices (cGMP) requirements enforced by the FDA as part of QSR, or similar regulations required by regulatory agencies in other countries. The manufacturing facilities of our contract manufacturers must be inspected or must have been inspected, and must be in full compliance with cGMP requirements before approval for marketing. The FDA enforces the QSR and other regulatory requirements through unannounced inspections. We have not yet been inspected by the FDA for MelaFind®, and will have to complete such an inspection successfully before we ship any commercial MelaFind® devices. However, we were previously inspected in connection with DIFOTI®, which we have discontinued for business reasons, and were cited for failures to comply fully with QSR mandated procedures. We have discussed the findings in a subsequent meeting with the FDA and are in the process of addressing the deficiencies. The FDA inspectors observed deficiencies that were documented on FDA Form 483 that was issued to us following the inspection. We have had a follow-up meeting with the FDA, and are working with the FDA and consultants to address the inspectional findings, particularly as they relate to current MelaFind® design development and ultimate MelaFind® commercial manufacturing. If we are not successful in convincing the FDA that we are capable of addressing its concerns, or if our efforts to address the deficiencies should prove unsuccessful, we might be subject to additional FDA action of a type described below, which could negatively affect our ability to commercialize MelaFind®.

There can be no assurance that the future interpretations of legal requirements made by the FDA or other regulatory bodies with possible retroactive effect, or the adoption of new requirements or policies, will not adversely affect us. We may be slow to adapt, or may not be able to adapt to these changes or new requirements. Failure by us or one of our suppliers to comply with statutes and regulations administered by the FDA and other regulatory bodies, or failure to take adequate response to any observations, could result in, among other things, any of the following actions:

- warning letters;
- fines and civil penalties;
- unanticipated expenditures;
- delays in approving or refusal to approve MelaFind®;
- withdrawal of approval by the FDA or other regulatory bodies;
- product recall or seizure;
- interruption of production;
- operating restrictions;
- injunctions; and
- criminal prosecution.

If any of these actions were to occur, it would harm our reputation and cause our product sales and profitability to suffer.

We are involved in a heavily regulated sector, and our ability to remain viable will depend on favorable government decisions at various points by various agencies.

From time to time, legislation is introduced in the US Congress that could significantly change the statutory provisions governing the approval, manufacture and marketing of a medical device. Additionally, healthcare is heavily regulated by the federal government, and by state and local governments. The federal laws and regulations affecting healthcare change constantly, thereby increasing the uncertainty and risk associated with any healthcare related venture, including our business and MelaFind®. In addition, FDA regulations and guidance are often revised or reinterpreted by the agency in ways that may significantly affect our business and our products. It is impossible to predict whether legislative changes will be enacted or FDA regulations, guidance, or interpretations changed, and what the impact of such changes, if any, may be.

The federal government regulates healthcare through various agencies, including but not limited to the following: (i) the FDA, which administers the Food, Drug, and Cosmetic Act (FD&C Act), as well as other relevant laws; (ii) CMS, which administers the Medicare and Medicaid programs; (iii) the Office of Inspector General (OIG) which enforces various laws aimed at curtailing fraudulent or abusive practices, including by way of example, the Anti-Kickback Law, the Anti-Physician Referral Law, commonly referred to as Stark, the Anti-Inducement Law, the Civil Money Penalty Law, and the laws that authorize the OIG to exclude healthcare providers and others from participating in federal healthcare programs; and (iv) the Office of Civil Rights, which administers the privacy aspects of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All of the aforementioned are agencies within HHS. Healthcare is also provided or regulated, as the case may be, by the Department of Defense through its TriCare program, the Public Health Service within HHS under the Public Health Service Act, the Department of Justice through

the Federal False Claims Act and various criminal statutes, and state governments under Medicaid and other state sponsored or funded programs and their internal laws regulating all healthcare activities.

In addition to regulation by the FDA as a medical device manufacturer, we are subject to general healthcare industry regulations. The healthcare industry is subject to extensive federal, state and local laws and regulations relating to:

- billing for services;
- quality of medical equipment and services;
- confidentiality, maintenance and security issues associated with medical records and individually identifiable health information;
- false claims; and
- labeling products.

These laws and regulations are extremely complex and, in some cases, still evolving. In many instances, the industry does not have the benefit of significant regulatory or judicial interpretation of these laws and regulations. If our operations are found to be in violation of any of the federal, state or local laws and regulations that govern our activities, we may be subject to the applicable penalty associated with the violation, including civil and criminal penalties, damages, fines or curtailment of our operations. The risk of being found in violation of these laws and 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 it, could cause us to incur significant legal expenses and divert our management's time and attention from the operation of our business.

We must comply with complex statutes prohibiting fraud and abuse, and both we and physicians utilizing MelaFind® could be subject to significant penalties for noncompliance.

There are extensive federal and state laws and regulations prohibiting fraud and abuse in the healthcare industry that can result in significant criminal and civil penalties. These federal laws include: the anti-kickback statute which prohibits certain business practices and relationships, including the payment or receipt of remuneration for the referral of patients whose care will be paid by Medicare or other federal healthcare programs; the physician self-referral prohibition, commonly referred to as the Stark Law; the anti-inducement law, which prohibits providers from offering anything to a Medicare or Medicaid beneficiary to induce that beneficiary to use items or services covered by either program; the Civil False Claims Act, which prohibits any person from knowingly presenting or causing to be presented false or fraudulent claims for payment by the federal government, including the Medicare and Medicaid programs and; the Civil Monetary Penalties Law, which authorizes HHS to impose civil penalties administratively for fraudulent or abusive acts.

Sanctions for violating these federal laws include criminal and civil penalties that range from punitive sanctions, damage assessments, money penalties, imprisonment, denial of Medicare and Medicaid payments, or exclusion from the Medicare and Medicaid programs, or both. As federal and state budget pressures continue, federal and state administrative agencies may also continue to escalate investigation and enforcement efforts to root out waste and to control fraud and abuse in governmental healthcare programs. Private enforcement of healthcare fraud has also increased, due in large part to amendments to the Civil False Claims Act in 1986 that were designed to encourage private persons to sue on behalf of the government. A violation of any of these federal and state fraud and abuse laws and regulations could have a material adverse effect on our liquidity and financial condition. An investigation into the use of MelaFind® by physicians may dissuade physicians from either purchasing or using MelaFind®, and could have a material adverse effect on our ability to commercialize MelaFind®.

The application of the privacy provisions of HIPAA is uncertain.

HIPAA, among other things, protects the privacy and security of individually identifiable health information by limiting its use and disclosure. HIPAA directly regulates "covered entities" (insurers, clearinghouses, and most healthcare providers) and indirectly regulates "business associates" with respect to the privacy of patients' medical information. All entities that receive and process protected health information are required to adopt certain procedures to safeguard the security of that information. It is uncertain whether we would be deemed to be a covered entity under HIPAA, and it is unlikely that based on our current business model, we would be a business associate. Nevertheless, we will likely be contractually required to physically safeguard the integrity and security of the patient information that we or our physician customers receive, store, create or transmit. If we fail to adhere to our contractual commitments, then our physician customers may be subject to civil monetary penalties, and this could adversely affect our ability to market MelaFind®. We also may be liable under state laws governing the privacy of health information.

We may become subject to claims of infringement or misappropriation of the intellectual property rights of others, which could prohibit us from shipping affected products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages and injunctive relief. Our patents may also be subject to challenge on validity grounds, and our patent applications may be rejected.

Third parties could, in the future, assert infringement or misappropriation claims against us with respect to our current or future products. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Therefore, we cannot be certain that we have not infringed the intellectual property rights of such third parties. Our potential competitors may assert that some aspect of MelaFind® infringes their patents. Because patent applications may take years to issue, there also may be applications now pending of which we are unaware that may later result in issued patents that MelaFind® infringes. There also may be existing patents of which we are unaware that one or more components of our MelaFind® system may inadvertently infringe.

Any infringement or misappropriation claim could cause us to incur significant costs, could place significant strain on our financial resources, divert management's attention from our business and harm our reputation. If the relevant patents were upheld as valid and enforceable and we were found to infringe, we could be prohibited from selling our product that is found to infringe unless we could obtain licenses to use the technology covered by the patent or are able to design around the patent. We may be unable to obtain a license on terms acceptable to us, if at all, and we may not be able to redesign MelaFind® to avoid infringement. A court could also order us to pay compensatory damages for such infringement, plus prejudgment interest and could, in addition, treble the compensatory damages and award attorney fees. These damages could be substantial and could harm our reputation, business, financial condition and operating results. A court also could enter orders that temporarily, preliminarily or permanently enjoin us and our customers from making, using, selling, offering to sell or importing MelaFind®, and/or could enter an order mandating that we undertake certain remedial activities. Depending on the nature of the relief ordered by the court, we could become liable for additional damages to third parties.

We also may rely on our patents, patent applications and other intellectual property rights to give us a competitive advantage. Whether a patent is valid, or whether a patent application should be granted, is a complex matter of science and law, and therefore we cannot be certain that, if challenged, our patents, patent applications and/or other intellectual property rights would be upheld. If one or more of those patents, patent applications and other intellectual property rights are invalidated, rejected or found unenforceable, that could reduce or eliminate any competitive advantage we might otherwise have had.

New product development in the medical device industry is both costly and labor intensive with very low success rates for successful commercialization; if we cannot successfully develop or obtain future products, our growth would be delayed.

Our long-term success is dependent, in large part, on the design, development and commercialization of MelaFind® and other new products and services in the medical device industry. The product development process is time-consuming, unpredictable and costly. There can be no assurance that we will be able to develop or acquire new products, successfully complete clinical trials, obtain the necessary regulatory clearances or approvals required from the FDA on a timely basis, or at all, manufacture our potential products in compliance with regulatory requirements or in commercial volumes, or that MelaFind® or other potential products will achieve market acceptance. In addition, changes in regulatory policy for product approval during the period of product development, and regulatory agency review of each submitted new application, may cause delays or rejections. It may be necessary for us to enter into licensing arrangements, in order to market effectively any new products or new indications for existing products. There can be no assurance that we will be successful in entering into such licensing arrangements on terms favorable to us or at all. Failure to develop, obtain necessary regulatory clearances or approvals for, or successfully market potential new products could have a material adverse effect on our business, financial condition and results of operations.

We face the risk of product liability claims and may not be able to obtain or maintain adequate insurance.

Our business exposes us to the risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices, including those which may arise from the misuse or malfunction of, or design flaws in, our products. We may be subject to product liability claims if MelaFind® causes, or merely appears to have caused, an injury or if a patient alleges that MelaFind® failed to provide appropriate diagnostic information on a lesion where melanoma was subsequently found to be present. Claims may be made by patients, healthcare providers or others involved with MelaFind®. MelaFind® will require PMA approval prior to commercialization in the US. The clinical studies of MelaFind® are considered by the FDA as Non-Significant Risk (NSR). Consequently, the trials are conducted under the auspices of an abbreviated Investigational Device Exemption (IDE). We therefore do not maintain domestic clinical trial liability insurance. We have obtained clinical trial liability insurance in certain European countries where required by statute or clinical site policy. Although we have general liability insurance that we believe is appropriate, and anticipate obtaining adequate product liability insurance before commercialization of MelaFind®, this insurance is and will be subject to deductibles and coverage limitations. Our anticipated product liability insurance may not be available to us in amounts and on acceptable terms, if at all, and if available, the coverages may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost or on acceptable terms with adequate coverage, or otherwise protect against potential product liability claims, we will be exposed to significant liabilities, which may harm our business. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could result in significant costs and significant harm to our business.

We may be subject to claims against us even if the apparent injury is due to the actions of others. For example, we rely on the expertise of physicians, nurses and other associated medical personnel to operate MelaFind®. If these medical personnel are not properly trained or are negligent, we may be subjected to liability. These liabilities could prevent or interfere with our product commercialization efforts. Defending a suit, regardless of merit, could be costly, could divert management attention and might result in adverse publicity, which could result in the withdrawal of, or inability to recruit, clinical trial volunteers, or result in reduced acceptance of MelaFind® in the market.

Insurance and surety companies have reassessed many aspects of their business and, as a result, may take actions that could negatively affect our business. These actions could include increasing insurance premiums, requiring higher self-insured retentions and deductibles, reducing limits, restricting coverages, imposing exclusions, and refusing to underwrite certain risks and classes of business. Any of these actions may adversely affect our ability to obtain appropriate insurance coverage at reasonable costs, which could have a material adverse effect on our business, financial condition and results of operations.

We may be adversely affected by a data center failure.

The success of MelaFind® is dependent upon our ability to protect our data center against damage from fire, power loss, telecommunications failure, natural disaster, sabotage or a similar catastrophic event. Substantially all of our computer equipment and data operations are located in a single facility. Our prospective failure to maintain off-site copies of information contained in our MelaFind® database, or our inability to use alternative sites in the event we experience a natural disaster, hardware or software malfunction or other interruption of our data center, or any interruption in the ability of physicians to obtain access to our MelaFind® server and its database could adversely impact our business, financial condition and results of operations.

We may be adversely affected by breaches of online security.

Our MelaFind® database does not contain any information that allows us to identify specific patients. However, we must identify certain data as belonging to or as derived from specific patients for billing purposes. To the extent that our activities involve the storage and transmission of confidential information, security breaches could damage our reputation and expose us to a risk of loss, or to litigation and possible liability. Our business may be materially adversely affected if our security measures do not prevent security breaches. In addition, such information may be subject to HIPAA privacy and security regulations, the potential violation of which may trigger concerns by healthcare providers, which may adversely impact our business, financial condition and results of operations.

We are dependent upon telecommunications and the internet.

The connection between the MelaFind® hand-held imaging device and the central server in our offices will be dependent on the internet. Our success will depend in large part on the continued availability of electronic means for storing and transmitting encoded compressed diagnostic information, and storing and transmitting the results of the comparison of such information with our electronically-maintained database through the internet. If the domestic and international telecommunications infrastructure required for these transmissions fails, our business could be materially adversely affected.

We plan to use the internet as a medium to provide diagnostic assistance services to physicians. We also plan to use the internet to inform the public about the availability of our products and to market to and communicate with physicians who are potential or actual customers. Our success will therefore depend in part on the continued growth and use of the internet. If our ability to use the internet fails, it may materially adversely affect our business.

We will be obligated to comply with Federal Communications Commission regulations for radio transmissions used by our products.

Versions of MelaFind® may rely on radio transmissions from the hand-held imaging device to a base station that is connected to the internet. Applicable requirements will restrict us to a particular band of frequencies allocated to low power radio service for transmitting data in support of specific diagnostic or therapeutic functions. Failure to comply with all applicable restrictions on the use of such frequencies, or unforeseeable difficulties with the use of such frequencies, could impede our ability to commercialize MelaFind®.

All of our operations are conducted at a single location. Any disruption at our facility could increase our expenses.

All of our operations are conducted at two adjacent buildings in Irvington, New York. We take precautions to safeguard our facility, including insurance, health and safety protocols, contracted off-site engineering services, provision for off-site manufacturing, and storage of computer data. However, a natural disaster, such as a fire, flood or earthquake, could cause substantial delays in our operations, damage or destroy our manufacturing equipment or inventory, and cause us to incur additional expenses. The insurance

we maintain against fires, floods, earthquakes and other natural disasters may not be adequate to cover our losses in any particular case.

We may be liable for contamination or other harm caused by materials that we handle, and changes in environmental regulations could cause us to incur additional expense.

Our manufacturing, research and development and clinical processes do not generally involve the handling of potentially harmful biological materials or hazardous materials, but they may occasionally do so. We are subject to federal, state and local laws and regulations governing the use, handling, storage and disposal of hazardous and biological materials. If violations of environmental, health and safety laws occur, we could be held liable for damages, penalties and costs of remedial actions. These expenses or this liability could have a significant negative impact on our business, financial condition and results of operations. We may violate environmental, health and safety laws in the future as a result of human error, equipment failure or other causes. Environmental laws could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We may be subject to potentially conflicting and changing regulatory agendas of political, business and environmental groups. Changes to or restrictions on permitting requirements or processes, hazardous or biological material storage or handling might require an unplanned capital investment or relocation. Failure to comply with new or existing laws or regulations could harm our business, financial condition and results of operations.

Failure to obtain and maintain regulatory approval in foreign jurisdictions will prevent us from marketing abroad.

Following commercialization of MelaFind® in the US, we may market MelaFind® internationally. Outside the US, we can market a product only if we receive a marketing authorization and, in some cases, pricing approval, from the appropriate regulatory authorities. The approval procedure varies among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval, in addition to other risks. Foreign regulatory bodies have established varying regulations governing product standards, packaging requirements, labeling requirements, import restrictions, tariff regulations, duties and tax requirements. We may not obtain foreign regulatory approvals on a timely basis, if at all. Foreign regulatory agencies, as well as the FDA, periodically inspect manufacturing facilities both in the US and abroad. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. We have not taken any significant actions to obtain foreign regulatory approvals. We may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize MelaFind® in any market on a timely basis, or at all. Our inability or failure to comply with varying foreign regulation, or the imposition of new regulations, could restrict our sale of products internationally.

Our success will depend on our ability to attract and retain our personnel.

We are highly dependent on our senior management, especially Joseph V. Gulfo, M.D., our President and Chief Executive Officer, and Dina Gutkowicz-Krusin, Ph.D., our Director of Clinical Studies. Our success will depend on our ability to retain our current management and to attract and retain qualified personnel in the future, including scientists, clinicians, engineers and other highly skilled personnel. Competition for senior management personnel, as well as scientists, clinicians, engineers, and experienced sales and marketing individuals, is intense, and we may not be able to retain our personnel. The loss of the services of members of our senior management, scientists, clinicians or engineers could prevent the implementation and completion of our objectives, including the development and introduction of MelaFind®. The loss of a member of our senior management or our professional staff would require the remaining executive officers to divert immediate and substantial attention to seeking a replacement. Each of our officers may terminate their employment at any time without notice and without cause or good reason.

We expect to expand our operations and grow our research and development, product development and administrative operations. This expansion is expected to place a significant strain on our management, and will require hiring a significant number of qualified personnel. Accordingly, recruiting and retaining such personnel in the future will be critical to our success. There is competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we fail to identify, attract, retain and motivate these highly skilled personnel, we may be unable to continue our development and commercialization activities.

Our financial results for future periods may be adversely affected by changes required by financial and accounting regulatory agencies.

Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the US. Generally accepted accounting principles in the US are subject to interpretation by the Financial Accounting Standards Board (FASB), the American Institute of Certified Public Accountants, the Securities and Exchange Commission (SEC), and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change.

For example, we currently are not required to record stock-based compensation charges if the employee's stock option exercise price is equal to or exceeds the fair value of our common stock at the date of grant. However, several companies have recently elected to change their accounting policies, and have begun to record the fair value of stock options as an expense. New FASB Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment (FASB Statement No. 123R), requires companies to recognize in the income statement the grant-date fair value of stock options and other equity-based compensation issued to employees. Under FASB Statement No. 123R, SEC registrants would have been required to implement this standard for interim or annual periods beginning after June 15, 2005, or after December 15, 2005 for small business issuers. On April 14, 2005, the SEC adopted a new rule amending the compliance dates for FASB Statement No. 123R. The SEC's new rule permits companies to implement FASB Statement No. 123R at the beginning of their next fiscal year, instead of the next reporting period that begins after June 15, 2005, or December 15, 2005 for small business issuers. Awards to most non-employee directors will be accounted for as employee awards. All public companies must use either the modified prospective or the modified retrospective transition method. Under the modified prospective method, awards that are granted, modified, or settled after the date of adoption should be measured and accounted for in accordance with FASB Statement No. 123R. Under the modified retrospective method, the previously-reported amounts are restated to either the beginning of the year of adoption or for all periods presented. If we elect to adopt the retroactive provisions and to restate all prior periods presented our operating expenses and reported losses will increase. Although we believe that our accounting practices are consistent with current accounting pronouncements, changes to or interpretations of accounting methods or policies in the future may require us to reclassify, restate or otherwise change or revise our financial statements.

Our financial results for future periods will be affected by the attainment of milestones.

We have granted to certain employees stock options that vest with the attainment of various performance milestones. Assuming that FASB Statement No. 123R is implemented, then upon the attainment of these milestones we will be required to recognize a stock based compensation expense in an amount based on the then current fair market value of our common stock underlying the options which vest when the milestone is attained. Assuming that all shares offered are sold in this public offering at a price of $ l per share, the mid-point of our filing range, that upon the attainment of each of the relevant milestones such offering price remains the fair market value per share of our common stock, and that the number of shares of our common stock outstanding after this offering remains l then we will record a compensation expense: (1) upon completion of this offering of $ l with respect to 125,000 shares underlying options with an assumed fair value of $4.00 per share; (2) upon filing our MelaFind® PMA with the FDA of $ l with respect to 50,000 shares underlying options with an assumed fair value of $4.00 per share; and (3) upon our

receipt of PMA approval for MelaFind® of $ l with respect to 25,000 shares underlying options with an assumed fair value of $4.00 per share and of $ l with respect to l shares underlying options with an fair value of $0.46 per share.

If we fail to maintain the adequacy of our internal controls, our ability to provide accurate financial statements could be impaired and any failure to maintain our internal controls and provide accurate financial statements could cause our stock price to decrease substantially.

We will face increased legal, accounting, administrative and other costs and expenses as a public company that we did not incur as a private company. The Sarbanes-Oxley Act of 2002 (SOX), as well as new rules subsequently implemented by the SEC, the Public Company Accounting Oversight Board and the NASDAQ National Market, require changes in the corporate governance practices of public companies. We expect these new rules and regulations to increase our legal and financial compliance costs, to divert management attention from operations and strategic opportunities, and to make legal, accounting and administrative activities more time-consuming and costly. We also expect to incur substantially higher costs to maintain directors' and officers' insurance. We are in the process of instituting changes to our internal procedures to satisfy the requirements of the SOX. We are evaluating our internal controls systems in order to allow us to report on, and our independent registered public accounting firm to attest to, our internal controls, as required by Section 404 of the SOX. While we anticipate being able to fully implement the requirements relating to internal controls and all other aspects of Section 404 of the SOX in a timely fashion, we cannot be certain as to the timing of completion of our evaluation, testing and remediation actions or the impact of the same on our operations, since there is no precedent available by which to measure compliance adequacy. As a small company with limited capital and human resources, we will need to divert management's time and attention away from our business in order to ensure compliance with these regulatory requirements. As a public company, we will require greater financial resources than we have had as a private company. Implementing these changes may require new information technologies systems, the auditing of our internal controls, and compliance training for our directors, officers and personnel. Such efforts would require a potentially significant expense. If we fail to maintain the adequacy of our internal controls as such standards are modified, supplemented or amended from time to time, we may not be able to provide accurate financial statements and comply with the SOX. Any failure to maintain the adequacy of our internal controls and provide accurate financial statements could cause the trading price of our common stock to decrease substantially.

Risks Relating to this Offering

An active trading market for our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. Although we are seeking approval for listing of our common stock on the NASDAQ National Market, an active trading market for our shares may never develop or be sustained following this offering. Further, we cannot be certain that the market price of our common stock will not decline below the initial public offering price or below the amount required by Nasdaq to maintain a listing on its National Market. Should we fail to meet the minimum standards established by Nasdaq for its National Market, we could be de-listed, meaning shareholders might be subject to limited liquidity. The initial public offering price for our common stock will be determined through negotiations with the underwriters. This initial public offering price may vary from the market price of our common stock after the offering and investors may therefore be unable to sell their common stock at or above the initial public offering price.

Our stock price will be volatile, meaning purchasers of our common stock could incur substantial losses.

Our stock price is likely to be volatile. The stock market in general and the market for medical technology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their common stock at or above the initial public offering price. The following factors, in addition to other risk

factors described in this section and general market and economic conditions, may have a significant impact on the market price of our common stock:

- results of our research and development efforts and our clinical trials;
- the timing of regulatory approval for our products;
- failure of any of our products, if approved, to achieve commercial success;
- the announcement of new products or product enhancements by us or our competitors;
- regulatory developments in the US and foreign countries;
- ability to manufacture our products to commercial standards;
- developments concerning our clinical collaborators, suppliers or marketing partners;
- changes in financial estimates or recommendations by securities analysts;
- public concern over our products;
- developments or disputes concerning patents or other intellectual property rights;
- product liability claims and litigation against us or our competitors;
- the departure of key personnel;
- the strength of our balance sheet;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in the structure of and third-party reimbursement in the US and other countries;
- changes in accounting principles or practices;
- general economic, industry and market conditions; and
- future sales of our common stock.

A decline in the market price of our common stock could cause you to lose some or all of your investment and may adversely impact our ability to attract and retain employees and raise capital. In addition, stockholders may initiate securities class action lawsuits if the market price of our stock drops significantly. Whether or not meritorious, litigation brought against us could result in substantial costs and could divert the time and attention of our management. Our insurance to cover claims of this sort may not be adequate.

We have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

We cannot specify with certainty the particular uses of the net proceeds we will receive from this offering. Our management will have broad discretion in the application of the net proceeds, including for any of the purposes described in “Use of Proceeds.” Accordingly, you will have to rely upon the judgment of our management with respect to the use of the proceeds, with only limited information concerning management’s specific intentions. Our management may spend a portion or all of the net proceeds from this offering in ways that our stockholders may not desire or that may not yield a favorable return. The failure by our management to apply these funds effectively could harm our business and financial condition. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

Concentration of ownership among our directors, executive officers, and principal stockholders may prevent new investors from influencing significant corporate decisions.

Upon closing of this offering, based upon beneficial ownership as of May 15, 2005, our directors, executive officers, holders of more than 5% of our common stock, and their affiliates will, in the aggregate,

beneficially own approximately l% of our outstanding common stock. As a result, these stockholders, subject to any fiduciary duties owed to our other stockholders under Delaware law, will be able to exercise a controlling influence over matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, and will have significant control over our management and policies. Some of these persons or entities may have interests that are different from yours. For example, these stockholders may support proposals and actions with which you may disagree or which are not in your interests. The concentration of ownership could delay or prevent a change in control of our company or otherwise discourage a potential acquirer from attempting to obtain control of our company, which in turn could reduce the price of our common stock. In addition, these stockholders, some of whom have representatives sitting on our board of directors, could use their voting influence to maintain our existing management and directors in office, delay or prevent changes of control of our company, or support or reject other management and board proposals that are subject to stockholder approval, such as amendments to our employee stock plans and approvals of significant financing transactions.

If there are substantial sales of our common stock, our stock price could decline.

If our existing stockholders sell a large number of shares of our common stock or the public market perceives that these sales may occur, the market price of our common stock could decline. Based on shares outstanding on May 15, 2005, upon the closing of this offering, assuming no outstanding options are exercised prior to the closing of this offering, we will have approximately l shares of common stock outstanding. All of the shares offered under this prospectus will be freely tradable without restriction or further registration under the federal securities laws, unless purchased by our affiliates. Taking into consideration the effect of lock-up agreements that will be entered into by our stockholders, the remaining l shares outstanding upon the closing of this initial public offering will be available for sale pursuant to Rules 144 and 701, and the volume, manner of sale and other limitations under these rules, as follows:

- l shares of common stock will be eligible for sale in the public market, beginning 270 days after the effective date of this prospectus, unless the lock-up period is otherwise extended pursuant to its terms; and
- the remaining l shares of common stock will become eligible for sale in the public market beginning l , 2005.

Existing stockholders holding an aggregate of l shares of common stock and warrant holders holding warrants to purchase l shares of our common stock, based on shares outstanding as of May 15, 2005 have rights with respect to the registration of these shares of common stock with the SEC. See “Description of Capital Stock — Registration Rights.” If we register these shares of common stock, they can immediately sell those shares in the public market.

Within nine months following this offering, we intend to register up to 1,899,875 shares of common stock that are authorized for issuance under our stock option plans. As of May 15, 2005, 899,875 shares were subject to outstanding options, of which 446,675 shares were vested. Once we register these shares, they can be freely sold in the public market upon issuance, subject to the lock-up agreements referred to above and restrictions on our affiliates.

You will incur immediate and substantial dilution as a result of this offering.

The initial public offering price is substantially higher than the book value per share of our common stock. As a result, purchasers in this offering will experience immediate and substantial dilution of $ l per share in the tangible book value of our common stock from the initial public offering price, based on the number of shares outstanding as of March 31, 2005. This is due in large part to earlier investors in the company having paid substantially less than the initial public offering price when they purchased their shares. Investors who purchase shares of common stock in this offering will contribute approximately l % of the total amount we have raised to fund our operations but will own only approximately l % of our common stock, based on the number of shares outstanding as of March 31, 2005. In addition, the exercise of currently outstanding options to purchase common stock and future equity issuances, including future public or private

securities offerings and any additional shares issued in connection with acquisitions, will result in further dilution.

Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable and could also limit the market price of our stock.

Upon the closing of this offering, provisions of our restated certificate of incorporation and bylaws and applicable provisions of Delaware law may make it more difficult for or prevent a third party from acquiring control of us without the approval of our board of directors. These provisions:

- set limitations on the removal of directors;
- limit who may call a special meeting of stockholders;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon at stockholder meetings;
- do not permit cumulative voting in the election of our directors, which would otherwise permit less than a majority of stockholders to elect directors;
- prohibit stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders; and
- provide our board of directors the ability to designate the terms of and issue a new series of preferred stock without stockholder approval.

In addition, Section 203 of the Delaware General Corporation Law generally limits our ability to engage in any business combination with certain persons who own 15% or more of our outstanding voting stock or any of our associates or affiliates who at any time in the past three years have owned 15% or more of our outstanding voting stock. These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirors at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this prospectus regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, 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. Although we do not make forward-looking statements unless we believe we have a reasonable basis for doing so, we cannot guarantee their accuracy. 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. Actual results or events could differ materially from the plans, intentions and expectations stated in the forward-looking statements we make. We have included important factors in the cautionary statements included in this prospectus, particularly in the “Risk Factors” section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Additional risks, uncertainties and factors, other than those discussed under “Risk Factors,” could also cause our actual results to differ materially from those projected in any forward-looking statements we make. We operate in a very competitive and rapidly changing environment in which new risks emerge from time to time and it is not possible for us to predict all risk factors, nor can we address the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. 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 or revise any forward-looking statements, or to so update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately l from our sale of l shares of common stock at an assumed initial public offering price of $ l per share, the mid-point of our filing range, after deducting underwriting discounts and commissions and estimated expenses of approximately $ l , which includes our underwriter's non-accountable expense allowance, legal, accounting, printing costs and expenses, and various fees associated with the registration and listing of our securities payable by us. If the underwriters exercise their over-allotment option in full, we will receive an additional $ l after deducting $ l for underwriting discounts and commissions.

We intend to use these net proceeds approximately as follows:

- l % ($ l) to fund our research and development activities, including our clinical studies;
- l % ($ l) to develop our sales and marketing capabilities; and
- l % ($ l) for general corporate purposes, including working capital, and capital expenditures made in the ordinary course of business.

The amounts that we actually expend for working capital purposes will vary significantly depending on a number of factors. As a result, we will retain broad discretion in the allocation of the net proceeds of this offering. While we have no present understandings, commitments or agreements to enter into any potential acquisitions, we may also use a portion of the net proceeds for the acquisition of, or investment in, technologies or products that complement our business. Pending the uses described above, we intend to invest the net proceeds of this offering in short-term, investment-grade, interest-bearing securities. We cannot predict whether the proceeds which we invest will yield a favorable return.

DIVIDEND POLICY

We have never declared or paid cash dividends on our common stock. We currently intend to retain our cash for the development of our business. We do not intend to pay cash dividends to our stockholders in the foreseeable future.

Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on then existing conditions, including our earnings, financial condition, results of operations, level of indebtedness, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. Our board of directors' ability to declare a dividend is also subject to limits imposed by Delaware law.

CAPITALIZATION

You should read this capitalization table together with the sections of this prospectus entitled "Management's Discussions and Analysis of Financial Condition and Results of Operations" and with the financial statements and related notes to those statements included elsewhere in this prospectus.

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

- on an actual basis; and
- on a pro forma as adjusted basis to reflect the conversion of all our outstanding shares of convertible preferred stock into shares of common stock immediately prior to completion of this offering, the assumed conversion of 2,610,643 warrants to purchase the company's common stock to be exchanged for a total of 1,305,321 shares of the company's common stock based on an exchange ratio of one share of our common stock for every two shares of our common stock purchasable under the warrants to occur prior to the closing of this offering and the receipt of the estimated net proceeds from the sale of l shares of our common stock in this offering at the assumed initial public offering price of $ l per share, the mid-point of our filing range, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

	As of March 31, 2005	
	Actual	Pro Forma(1) As Adjusted (unaudited)
	(In thousands, except share and per share data)	
Redeemable Convertible Preferred Stock:		
Redeemable Preferred Stock Series B convertible; 992,986 shares designated (liquidation preference $2.26 per share); issued and outstanding 992,986 shares at December 31, 2003 and 2004 and March 31, 2005 and 0 shares at March 31, 2005, pro forma as adjusted	$ 2,224	l
Redeemable Preferred Stock Series C convertible 5,744,340 shares designated (liquidation preference $2.26 per share); issued and outstanding 907,077 shares at December 31, 2003 and 5,414,779 shares at December 31, 2004 and March 31, 2005 and 0 shares at March 31, 2005, pro forma as adjusted	6,762	l
Stockholders' (Deficiency) Equity:		
Preferred stock — $.10 par value; authorized 16,936,704 shares:		
Series A Convertible Preferred Stock, 199,380 shares designated (liquidation preference $5.00 per share); issued and outstanding 198,000 shares at December 31, 2003 and 2004 and March 31, 2005 and 0 shares at March 31, 2005, pro forma as adjusted	972	l
Common stock — $.001 par value; authorized 30,000,000 shares; issued and outstanding 1,684,760 shares at December 31, 2003 and 1,809,758 shares at December 31, 2004 and March 31, 2005 and 6,513,164 shares at March 31, 2005, pro forma as adjusted	2	l
Additional paid-in capital	10,631	l
Notes receivable	(69)	l
Deferred compensation	(151)	l
Accumulated deficit	(15,150)	l
Stockholders' (Deficiency) Equity	(3,765)	l
Total Capitalization	$ 5,241	l

None of the columns shown above reflect the following:

- 899,875 shares of common stock issuable as of the date of this prospectus upon the exercise of outstanding stock options under our 2003 Stock Incentive Plan and our 1996 Stock Option Plan, respectively, at a weighted average exercise price of approximately $0.63 per share, which amount is 54,391 shares less than the number of shares issuable under such option plans as of March 31, 2005 due to the effect of a formula-based option granted to our President and Chief Executive Officer — see “Management — Employment Agreement”;
- up to 1,000,000 shares of common stock reserved for future grants under our 2005 Stock Incentive Plan;
- 75,000 shares of common stock issuable upon exercise of outstanding warrants to purchase our common stock at an exercise price of $7.00 per share;
- 73,280 shares of common stock issuable upon exercise of outstanding warrants to purchase our series C convertible preferred stock (assuming conversion of our series C convertible preferred stock) at an exercise price of $4.52 per share; and
- l shares of common stock issuable upon exercise of warrants to be issued to the underwriters upon completion of this offering at an exercise price equal to 125% of the public offering price per share.

(1) Includes the impact of 125,000 options that vest upon consummation of the offering, which will have no effect on total stockholders’ equity but will require an expense of $ l to be recorded if such options vested at the assumed initial public offering price of $ l per share, which is the mid-point of our filing range.

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the public offering price per share of our common stock and the net tangible book value per share of our common stock immediately after this offering. Net tangible book value per share represents the amount of our common stockholders’ equity, less intangible assets, divided by the number of shares of our common stock outstanding. As of March 31, 2005, we had a net tangible book value of approximately $(3,925,630) or $(2.17) per share of common stock. Pro forma net tangible book value as of March 31, 2005 is $ l or $ l per common share. Assuming the sale by us of l shares of common stock offered in this offering at an assumed initial public offering price of $ l per share, the mid-point of our filing range, and after deducting the underwriting discounts and commissions and estimated offering expenses, our as adjusted pro forma net tangible book value as of March 31, 2005, would have been $ l , or $ l per share of common stock. This represents an immediate increase in pro forma net tangible book value of $ l per share of common stock to our existing stockholders and an immediate dilution of $ l per share to the new investors purchasing shares in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share	$	l
Net tangible book value per share as of March 31, 2005	$	(2.17)
Pro forma net tangible book value per share as of March 31, 2005	$	l
Increase in pro forma net tangible book value per share attributable to new investors	$	l
Pro forma net tangible book value per share after the offering	$	l
Dilution per share to new investors	$	l

The following table sets forth on a pro forma as adjusted basis, as of March 31, 2005, the number of shares of common stock purchased from us (assuming conversion of all preferred stock into common stock), the total consideration paid and the average price per share paid by existing holders of common stock

(assuming conversion of all preferred stock into common stock) and by the new investors in this initial public offering, before deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Average Consideration
	Number	Percent	Amount	Percent	Per Share
Existing Investors	6,513,164	l%	$ 20,033,573	l%	$ 3.08
New Investors	l	l	l	l	l
Total	l	100.0%	l	100.0%	

Assuming all our outstanding options and the outstanding warrants are fully exercised, the shares purchased by the new investors would constitute l % of all shares purchased from us, and the total consideration paid by new investors would constitute l % of the total consideration paid for all shares purchased from us. In addition, the average price per share paid by new investors would be $ l , and the average price per share paid by existing stockholders would be $3.08.

In the preceding tables, the shares of our common stock exclude, as of March 31, 2005:

- 899,875 shares of common stock issuable as of the date of this prospectus upon the exercise of outstanding stock options under our 2003 Stock Incentive Plan and our 1996 Stock Option Plan, respectively, at a weighted average exercise price of approximately $0.63 per share, which amount is 54,391 shares less than the number of shares issuable under such option plans as of March 31, 2005 due to the effect of a formula-based option granted to our President and Chief Executive Officer — see “Management — Employment Agreement”;
- up to 1,000,000 shares of common stock reserved for future grants under our 2005 Stock Incentive Plan;
- 75,000 shares of common stock issuable upon exercise of outstanding warrants to purchase common stock at an exercise price of $7.00 per share;
- 73,280 shares of common stock issuable upon exercise of outstanding warrants to purchase our series C convertible preferred stock (assuming conversion of our series C convertible preferred stock) at an exercise price of $4.52 per share; and
- l shares of common stock issuable upon exercise of warrants to be issued to the underwriters upon completion of this offering at an exercise price equal to 125% of the public offering price per share.

SELECTED FINANCIAL DATA

The following summary financial data for the fiscal years ended December 31, 2000, 2001, 2002, 2003 and 2004 have been derived from our historical audited financial statements. The summary financial data for the three months periods ended March 31, 2004 and 2005 have been derived from our unaudited financial statements. The unaudited summary financial data include, in our opinion, all adjustments, consisting only of normal, recurring adjustments, necessary to present fairly the financial position and results of operations for the periods presented. Our historical results for and prior or interim period are not necessarily indicative of results to be expected for a full fiscal year or for any future period. The selected financial data shown below include revenues and related expenses for our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities. We decided to discontinue all operations associated with our DIFOTI® product, effective as of April 5, 2005, in order to focus our resources and attention on the development and commercialization of MelaFind®. See the footnote to the Financial Statements relating to subsequent events included elsewhere in this prospectus. You should read the following selected financial information together with the financial statements and the related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this prospectus.

	Year Ended December 31,					Three Months Ended March 31,	
	2000	2001	2002	2003	2004	2004	2005
	(In thousands, except share and per share data)					(unaudited)	
Statements of Operations Data:							
Revenue from DIFOTI® sales, net	$ 194	$ 80	$ 143	$ 375	$ 364	$ 91	$ 88
Revenue from grants	210	290	547	—	—	—	—
Total revenues	404	370	690	375	364	91	88
Cost of goods sold	464	217	650	83	166	20	8
Gross profit	(60)	153	40	292	198	71	80
Operating expenses:							
Research and development	726	144	404	828	1,892	307	636
Selling, general and administrative	1,573	2,962	769	1,339	1,858	533	713
Total operating expenses	2,299	3,106	1,173	2,167	3,750	840	1,349
Loss from operations	(2,359)	(2,953)	(1,133)	(1,875)	(3,552)	(769)	(1,269)
Interest (income)/expense	(79)	(85)	8	75	67	1	(26)
Net loss	(2,280)	(2,868)	(1,141)	(1,950)	(3,619)	(770)	(1,243)
Preferred stock deemed dividends	85	213	214	322	676	111	362
Preferred stock accretion	143	180	180	25	323	7	421
Stock distribution on series B preferred shares	—	—	—	102	—	—	—
Net loss attributable to common stockholders	$ (2,508)	$ (3,261)	$ (1,535)	$ (2,399)	$ (4,618)	$ (888)	$ (2,026)

	Year Ended December 31,					Three Months Ended March 31,	
	2000	2001	2002	2003	2004	2004	2005
	(In thousands, except share and per share data)					(unaudited)	
Basic and diluted net loss per share	$ (1.64)	$ (2.13)	$ (1.00)	$ (1.49)	$ (2.61)	$ (0.53)	$ (1.12)
Weighted average shares outstanding — basic and diluted	1,529,471	1,534,540	1,534,760	1,614,897	1,766,608	1,684,760	1,809,758
Pro forma basic and diluted net loss per common share (unaudited)(1)					$ (0.91)		$ (0.19)
Pro forma basic and diluted weighted average number of common shares outstanding (unaudited)(1)					3,967,024		6,513,164

(1) Pro forma basic and diluted net loss per common share reflects the effect of the assumed conversion of the company's preferred stock, as if this offering had occurred at the date of original issuance, into 3,398,105 shares of our common stock for the year ended December 31, 2004 and three months ended March 31, 2005 which will occur upon closing of this offering. Additionally, it is assumed that 2,610,643 warrants to purchase the Company's common stock will be exchanged for a total of 1,305,321 shares of the company's common stock based on an exchange ratio of one share of our common stock for every two shares of our common stock purchaseable under the warrants and will occur prior to the closing of this offering. The net loss attributable to our common stockholders used in the computation of basic and diluted net loss per share for the unaudited pro forma net loss attributable to common stockholders has been adjusted to reverse the accretion on our preferred stock and also excludes the preferred stock dividends for the respective period.

The following table presents summary balance sheet data, derived from our historical audited financial statements. The table also presents summary balance sheet, derived from our historical unaudited financial statements, as of March 31, 2004 and March 31, 2005:

	Year Ended December 31,					Three Months Ended March 31,	
	2000	2001	2002	2003	2004	2004	2005
	(In thousands)					(unaudited)	
Balance Sheet Data:							
Total current assets	$ 3,513	$ 867	$ 111	$ 217	$ 6,813	$ 498	$ 5,413
Total assets	3,814	1,131	344	432	7,096	713	5,734
Total liabilities	211	247	529	650	691	600	493
Redeemable convertible preferred stock	2,058	2,155	2,244	4,067	8,585	4,080	9,006
Accumulated deficit	(4,148)	(7,197)	(8,518)	(10,288)	(13,907)	(11,191)	(15,150)
Total stockholders' (deficiency)/equity	(498)	(3,408)	(4,657)	(4,285)	(2,180)	113	(3,765)

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

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes appearing at the end of this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a medical device company focused on the design and development of a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma. Our flagship product, MelaFind® features a hand-held imaging device that emits multiple wavelengths of light to capture images of suspicious pigmented skin lesions and extract data. We currently do not have any commercialized products or any significant source of revenue, however, the financial results discussed below include the revenues and the related expenses associated with our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities. We decided to discontinue all operations associated with our DIFOTI® product effective as of April 5, 2005, in order to focus our resources and attention on the development and commercialization of MelaFind®. We are currently seeking an acquirer for the DIFOTI® assets, and we do not expect to have any significant continuing responsibility for the DIFOTI® business after its disposition.

Our revenue for the foreseeable future will depend on the commercialization of MelaFind® and may vary substantially from year to year and quarter to quarter. Our operating expenses may also vary substantially from year to year and quarter to quarter based on the timing of the clinical trial and patient enrollment. We believe that period-to-period comparisons of our results of operations are not meaningful and should not be relied on as indicative of our future performance.

We commenced operations in December 1989 as a New York corporation and re-incorporated as a Delaware corporation in September 1997. Since our inception, we have generated significant losses. As of March 31, 2005, we had an accumulated deficit of $15.1 million. We expect to continue to spend significant amounts on the development of MelaFind®. We expect to incur significant commercialization costs when we begin to introduce MelaFind® into the US market. Accordingly, we will need to generate significant revenues to achieve and then maintain profitability.

Most of our expenditures to date have been for research and development activities and general and administrative expenses. Research and development expenses represent costs incurred for product development, clinical trials and activities relating to regulatory filings and manufacturing development efforts. We expense all of our research and development costs as they are incurred.

Our research and development expenses incurred through March 31, 2005 were expenses related primarily to the development of MelaFind®. We expect to incur additional research and development expenses relating to MelaFind® prior to its commercial launch in the US and selected markets outside the US. These additional expenses are subject to the risks and uncertainties associated with clinical trials and the FDA regulatory review and approval process. As a result, these additional expenses could exceed our estimated amounts, possibly materially.

Marketing, general and administrative expenses consist primarily of salaries and related expenses, general corporate activities and costs associated with our efforts to obtain PMA approval for MelaFind®and building a commercial infrastructure to market and sell MelaFind®. We anticipate that general and administrative expenses will increase as a result of the expected expansion of our operations, facilities and other activities associated with the planned expansion of our business, together with the additional costs associated with

operating as a public company. We expect marketing, general and administrative expenses to increase as we build our sales force and marketing capabilities to support placing MelaFind® in selected markets.

At December 31, 2004, we had available a net operating loss carryforward for federal income tax reporting purposes of approximately $12.2 million. The net operating loss carryforward may be available to offset future taxable income expiring at various dates through the year 2024. The Company's ability to utilize its net operating losses may be significantly limited due to changes in the company's ownership as defined by federal income tax regulations.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the US. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our judgments related to accounting estimates. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 1 to our financial statements appearing at the end of this prospectus, we believe that the following accounting policies and significant judgments and estimates relating to revenue recognition, stock-based compensation charges, and accrued expenses are most critical to aid you in fully understanding and evaluating our reported financial results.

Revenue Recognition

Revenue from the DIFOTI® product sales is recognized at the time of delivery and acceptance, after consideration of all the terms and conditions of the customer contract. The DIFOTI® products which were being sold prior to December 31, 2004 included a 30-day return policy. Revenue on these products is recognized after the shipment is made and the 30-day return period has elapsed. DIFOTI® products sold subsequent to December 31, 2004 were sold without a right of return and revenue is therefore recognized after the shipment is made. Deferred revenues at each respective balance sheet date consist of revenues that were billed or paid in advance of the shipment of the product. During April 2005 the company discontinued the sale of the DIFOTI® product line.

Stock-Based Compensation

We account for non-employee stock-based awards in which goods or services are the consideration received for the equity instruments issued based on the fair value of the equity instruments issued in accordance with the Emerging Issues Task Force Issue No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction With Selling, Goods or Services."

We account for stock-based compensation to employees under the intrinsic-value-based method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and disclose the effect of the differences which would result had we applied the fair-value-based method of accounting, on a pro forma basis, as required by FASB Statement No. 123, "Accounting for Stock-Based Compensation, as amended by Statement of Financial Accounting Standards (SFAS) No. 148, Accounting for Stock-Based Compensation, Transition and Disclosure." In December 2004, FASB issued FASB Statement No. 123R, which addresses the accounting for share-based awards to employees and requires companies to recognize the fair value of stock options and other stock-based compensation to employees in their statement of operations. Because we currently account for our stock-based compensation plans in accordance with APB Opinion No. 25, the adoption of FASB Statement No. 123R will have a material effect on our financial statements in future accounting periods.

Our common stock has not been publicly traded and the determination of the fair value of our common stock involves considerable judgment. In making this determination, we evaluated, among other things, our common stock transactions, the pricing of private equity sales, the rights and preferences of the security being valued, current market conditions, and company specific operational milestones.

Accrued Expenses

As part of the process of preparing financial statements, we are required to estimate accrued expenses. This process involves identifying services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for such service where we have not been invoiced or otherwise notified of the actual cost. This is done as of each balance sheet date in our financial statements. Examples of estimated accrued expenses include:

- professional service fees;
- contract clinical service fees;
- fees paid to contract manufacturers in conjunction with the production of clinical components or materials; and
- fees paid to third party data collection organizations and investigators in conjunction with the clinical trials.

In connection with such service fees, our estimates are most affected by our projections of the timing of services provided relative to the actual level of services incurred by such service providers. The majority of our service providers invoice us monthly in arrears for services performed. In the event that we do not identify certain costs that have begun to be incurred or we under or over estimate the level of services performed or the costs of such services, our actual expenses could differ from such estimates. The date on which certain services commence, the level of services performed on or before a given date, and the cost of such services are often subjective determinations. We make these judgments based upon the facts and circumstances known to us in accordance with accounting principles generally accepted in the US.

Results of Operations (in thousands)

Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004 (Unaudited)

Revenue. Revenue for the three months ended March 31, 2005 was $88 compared to $91 for the same period in 2004. The revenue for both periods represents the sales of our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities.

Gross Profit. Gross profit increased by $9 to $80 for the three months ended March 31, 2005 from $71 for the three months ended March 31, 2004. Expressed as a percentage of sales, the gross profit increased to 91% for the three months ended March 31, 2005 compared to 78% for the three months ended March 31, 2004.

Research and Development Expense. Research and development expense increased by $329 to $636 for the three months ended March 31, 2005 from $307 for the three months ended March 31, 2004. Of this increase, $173 was attributable to higher personnel and personnel related costs as we increased headcount to support our research and development programs and $129 relates to increased consulting and outside research fees for the development of our MelaFind® product, a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma.

Selling, General and Administrative Expense. Selling, general and administrative expense increased by $180 to $713 for the three months ended March 31, 2005 from $533 for the three months ended March 31, 2004. The increase is primarily due to higher personnel and personnel related costs of $155 associated with the addition of key management positions and $20 related to increased consulting fees.

Interest (Income)/ Expense. Interest (income)/expense for the three months ended March 31, 2005 was ($26) compared to $1 for the corresponding period in 2004. The increase was due to higher average cash, cash equivalents and marketable securities balance during 2005.

Year Ended December 31, 2004 Compared to Year Ended December 31, 2003

Revenue. Revenue for the year ended December 31, 2004 was $364 compared to $375 for the corresponding period last year. The revenue for both periods represents the sales of our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities.

Gross Profit. Gross profit decreased by $94 to $198 for the year ended December 31, 2004 from $292 for the year ended December 31, 2003. Expressed as a percentage of sales the gross profit decreased to 54% for the year ended December 31, 2004 compared to 78% for the year ended December 31, 2003.

Research and Development Expense. Research and development expenses increased by $1,064, from $828 for the year ended December 31, 2003 to $1,892 for the year ended December 31, 2004. This increase relates to increased headcount to support our research and development programs in the amount of $715, and $332 represents increased consulting and outside research fees related to the development of MelaFind®. For the year ended December 31, 2004 research and development costs were approximately 50% of total operating expenses. Clinical and regulatory expense, a component of research and development expense, totaled approximately $797 for the year ended December 31, 2004. We expect our research and development expenses to increase in connection with our clinical trials and other development activities as we advance our MelaFind® pivotal study and complete the PMA regulatory approval process.

Selling, General and Administrative Expense. Selling, general and administrative expenses increased by $519, to $1,858 for the year ended December 31, 2004 from $1,339 for the year ended December 31, 2003. The increase was principally attributable to higher DIFOTI® marketing and sales expenses of $100, an increase in personnel and personnel related costs of $63 associated with additions to the management team, $150 in stock-based compensation to non-employee board members, and $193 in stock-based payments for consulting services. For the year ended December 31, 2004 marketing general and administrative expenses were approximately 50% of total operating expenses. We expect that marketing expenses will increase to support efforts to obtain PMA approval and commence the commercialization of MelaFind®. In addition, our general and administrative expenses will increase to support the additional costs associated with being a public company.

Interest (Income)/ Expense. Interest (income)/expense for the year ended December 31, 2004 was $67 compared to $75 for the corresponding period in 2003. The decrease was due to an imputed interest charge of $80 related to the series C private placement during 2004.

Year Ended December 31, 2003 Compared to Year Ended December 31, 2002

Revenue. Revenue for the year ended December 31, 2003 was $375 compared to $690 for the corresponding period in 2002. The sales of our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities, were $375 for the year ended December 31, 2003 and $143 for the year ended December 31, 2002. In addition, grant revenue was recognized for the year ended December 31, 2002 in the amount of $547.

Gross Profit. Gross profit increased by $252 to $292 for the year ended December 31, 2003 from $40 for the year ended December 31, 2002. For the year ended December 31, 2002, the cost of goods sold includes all the expenses attributable to the grant revenue.

Research and Development Expense. Research and development expenses increased $424 to $828 for the year ended December 31, 2003 from $404 for the year ended December 31, 2002. Of this increase, $280 was principally attributable to personnel and personnel related costs that specifically supported the grant program in 2002 and were classified as cost of goods sold in 2002 and $93 related to an increase in other consulting and outside research fees for the development of our MelaFind® product, a non-invasive, point-of-care instrument to assist physicians in the early diagnosis of melanoma. For the year ended December 31,

2003 research and development costs were approximately 38% of total operating expenses. Clinical and regulatory expense, a component of research and development expense totaled approximately $50 for the year ended December 31, 2003.

Selling, General and Administrative Expense. Selling, general and administrative expenses increased by $570 to $1339 for the year ended December 31, 2003 from $769 for the year ended December 31, 2002. The increase was principally attributable to personnel and personnel related costs of $488 that supported the grant program in 2002 and were classified as cost of goods sold in 2002 and the addition of two DIFOTI® marketing and sales positions. For the year ended December 31, 2003 marketing, general and administrative expenses were approximately 62% of total operating expenses.

Interest (Income)/ Expense. Interest (income)/expense for the year ended December 31, 2003 was $75 compared to $8 for the corresponding period in 2002. The increase was due to a charge of $45 associated with the value of the beneficial conversion feature for a promissory note during 2003.

Liquidity and Capital Resources (in thousands)

From inception, we have financed our operations primarily through the use of working capital from private placements of equity securities and by applying for and obtaining a series of National Institute of Health Small Business Innovative Research grants and similar grants. To date, we have not borrowed (other than by issuing convertible notes, all of which have been converted into equity) or financed our operations through significant equipment leases, financing loans or other debt instruments. As of March 31, 2005, we had $5,300 in cash, cash equivalents and marketable securities as compared to $6,703 at December 31, 2004. Our cash, cash equivalents and marketable securities are liquid investments with a maturity within one year and consist of investments in money market funds with a commercial bank and short-term commercial paper and government obligations.

Cash Flows from Operating Activities. Net cash used in operations was $1,382 for the three months ended March 31, 2005. For the years ended December 31, 2002, 2003 and 2004 the net cash used in operations was $684, $1,699, and $3,065 respectively. For all periods, cash used in operations was attributable primarily to net losses after adjustment for non-cash charges related to depreciation and other changes in operating assets and liabilities.

Cash from Investing Activities. Net cash provided by our investing activities was $1,464 for the three months ended March 31, 2005 principally relates to the redemption of investments. For the years ended December 31, 2002, 2003 and 2004 the net cash provided by (used in) investing activities was $518, $(8) and $(6,677) respectively. The increase in cash used in investing activities in the years ended December 31, 2003 and 2004 was principally related to the net purchase of investments and equipment from the proceeds of our private placement financings. Cash used in investing activities for the year ended December 31, 2002 reflected the redemption of investments.

Cash Flows from Financing Activities. Net cash provided by financing activities was zero for the three months ended March 31, 2005. For the years ended December 31, 2002, 2003 and 2004 the net cash flows provided by financing activities was zero, $1,816 and $9,733 respectively. For these periods, financing cash flows reflected the proceeds from the issuance of common stock, and preferred stock.

Operating Capital and Capital Expenditure Requirements

To date, we have not commercialized our principal product, MelaFind®. We anticipate that we will continue to incur net losses for the foreseeable future as we continue to develop the MelaFind® system, expand our clinical development team and corporate infrastructure, and prepare for the potential commercial launch of MelaFind®. We do not expect to generate significant product revenue until we successfully obtain PMA approval for and begin selling MelaFind®. We believe that the net proceeds from this offering, together with our current cash, cash equivalents and marketable securities and interest we earn on these balances, will be sufficient to meet our anticipated cash needs for working capital and capital expenditures through mid 2008. If existing cash and cash generated from this offering are insufficient to satisfy our liquidity requirements, or if

we develop additional products, we may seek to sell additional equity or debt securities or obtain a credit facility. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock, and could contain covenants that would restrict our operations. Any additional financing may not be available in amounts or on terms acceptable to us, or at all. If we are unable to obtain this additional financing, we may be required to reduce the scope of, delay or eliminate some or all of planned product research development and commercialization activities, which could harm our business.

Because of the numerous risks and uncertainties associated with the development of medical devices such as MelaFind®, we are unable to estimate the exact amounts of capital outlays and operating expenditures associated with our current and anticipated clinical trials. Our future funding requirements will depend on many factors, including, but not limited to:

- the schedule, costs, and results of our clinical trials;
- the success of our research and development efforts;
- the costs and timing of regulatory approval;
- reimbursement amounts for the use of MelaFind® that we are able to obtain from Medicare and third party payors, or the amount of direct payments we are able to obtain from patients and/or physicians utilizing MelaFind®;
- the cost of commercialization activities, including product marketing and building a domestic direct sales force;
- the emergence of competing or complementary technological developments;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other rights, including litigation costs and the results of such litigation;
- the costs involved in defending any patent infringement actions brought against us by third parties; and
- our ability to establish and maintain any collaborative, licensing or other arrangements, and the terms and timing of any such arrangements.

Contractual Obligations

The following table summarizes our outstanding contractual obligations as of December 31, 2004 and the effect those obligations are expected to have on our liquidity and cash flows in future periods:

Payments Due by Period
(dollars in thousands)

Contractual Obligations	Total	Less than 1 Year	1-3 Years	4-5 Years	More than 5 years
Operating Leases	$ 694	$ 155	$ 319	$ 220	—
Total	$ 694	$ 155	$ 319	$ 220	—

Our long-term obligations are two non-cancelable operating leases for space expiring June 2005 and November 2010. The lease on 3,700 square feet of office, laboratory and assembly space expires in June 2005. We have orally agreed with the landlord to extend this lease through June 2009 and we intend to enter into a lease agreement which will evidence this extension. The lease on 2,800 square feet of office space expires November 2010.

Related Party Transactions

For a description of our related party transactions, see the “Related Party Transactions” section of this prospectus.

Off-Balance Sheet Arrangements

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 such, we are not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in these relationships.

Quantitative and Qualitative Disclosures about Market Risk

Our exposure to market risk is confined to our cash equivalents and short-term investments. We invest in high-quality financial instruments; primarily money market funds, federal agency notes, and asset-backed securities, with the effective duration of the portfolio within one year which we believe are subject to limited credit risk. We currently do not hedge interest rate exposure. Due to the short-term nature of our investments, we do not believe that we have any material exposure to interest rate risk arising from our investments.

Recent Accounting Pronouncements

In May 2003, FASB issued Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity (SFAS No. 150). This statement establishes how a company classifies and measures certain financial instruments with characteristics of both liabilities and equity, including redeemable convertible preferred stock. This statement is effective for financial instruments entered into or modified after May 31, 2003, and is otherwise effective at the beginning of the interim period commencing July 1, 2003, except for mandatorily redeemable financial instruments of nonpublic companies. FASB has indefinitely deferred implementation of some provisions of SFAS No. 150. The adoption of SFAS No. 150 did not have a material effect on our financial position or results of operations.

Quarterly Results of Operations

The following table sets forth unaudited financial and operating data in each fiscal quarter during 2003 and 2004. The unaudited quarterly information reflects all adjustments, which include only normal and recurring adjustments necessary to present fairly the information shown.

	Year Ended December 31, 2003					Year Ended December 31, 2004				
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
	(In thousands)									
Revenue	$ 90	$ 86	$ 112	$ 87	$ 375	$ 91	$ 172	$ 81	$ 20	$ 364
Cost of Sales	57	18	33	(25)	83	20	67	36	43	166
Gross profit	33	68	79	112	292	71	105	45	(23)	198
Operating expenses:										
Research and development	126	198	246	258	828	307	301	482	802	1,892
Marketing, general and administrative	246	322	340	431	1,339	533	439	477	409	1,858
Total Operating expenses	372	520	586	689	2,167	840	740	959	1,211	3,750
Loss from operations	(339)	(452)	(507)	(577)	(1,875)	(769)	(635)	(914)	(1,234)	(3,552)
Interest (income)/expenses	(11)	27	5	54	75	1	1	(1)	66	67
Net loss	$ (328)	$ (479)	$ (512)	$ (631)	$ (1,950)	$ (770)	$ (636)	$ (913)	$ (1,300)	$ (3,619)

OUR BUSINESS

Overview

We are a medical device company focused on the design and development of a non-invasive, point-of-care instrument to assist in the early diagnosis of melanoma. Our flagship product, MelaFind® features a hand-held imaging device that emits multiple wavelengths of light to capture images of suspicious pigmented skin lesions and extract data. The data are then analyzed against our proprietary database of melanomas and benign lesions using our sophisticated algorithms in order to provide information to the physician and produce a recommendation of whether the lesion should be biopsied.

The components of the MelaFind® system include:

- a *hand-held imaging device*, which employs high precision optics and multi-spectral illumination (multiple colors of light including near infra-red);
- our *proprietary database* of pigmented skin lesions, which we believe to be the largest in the US;
- our *lesion classifiers*, which are sophisticated mathematical algorithms that extract lesion feature information and classify lesions; and
- a *central server* in our offices that is intended to perform quality control functions and provide reports to the physician and in commercial use, will be connected to physicians' offices via the internet.

We have entered into a binding Protocol Agreement with the FDA which is an agreement for the conduct of the pivotal trial in order to establish the safety and effectiveness of MelaFind®. We believe the presence of the Protocol Agreement significantly enhances our ability to expedite the FDA approval process. Management estimates that the study will commence in early 2006 at over 20 US clinical study sites, and anticipates PMA approval to commercialize MelaFind® in 2007.

Cancers of the skin have a higher incidence than all other cancers combined, and the rates are rising dramatically. Melanoma is responsible for approximately 80% of skin cancer fatalities and is the deadliest of all skin cancers as there is currently no cure for advanced stage melanoma. However, early detection of skin cancers like melanoma can lead to virtually a 100% cure rate. Advanced stage melanoma is costly to treat and is responsible for approximately 90% of the total spending on melanoma treatment in the US, costing up to $170,000 per patient. If diagnosed early, however, melanoma is almost always cured by simple resection at a cost of approximately $1,800 per patient.

Because early detection is critical to survival, the American Cancer Society recommends that individuals age 40 years and older have complete skin examinations on an annual basis. According to the 2000 US Census data, over 100 million Americans in the US are over age 40. Furthermore, there are more than 20 million individuals in the US who have dysplastic nevi, a type of pigmented skin lesion that when present is associated with an increased risk of melanoma. These individuals warrant more frequent observation.

Melanomas are mainly diagnosed by dermatologists and/or primary care physicians using visual clinical evaluation. Physicians assess pigmented skin lesions using the "ABCDE" criteria, Asymmetry, Border irregularity, Color variation, Diameter greater than 6 mm, and Evolving — change in ABCD over time. This assessment is subjective and results in missed melanomas, as well as a ratio of benign lesions biopsied to melanomas confirmed that is highly variable and as high as 40 to 1 for dermatologists and as high as 50 to 1 for primary care physicians.

To date, MelaFind® has been studied on over 5,000 skin lesions from over 3,500 patients at over 20 clinics. Our clinical studies have demonstrated that MelaFind® missed fewer melanomas and produced fewer false positives than experienced by study dermatologists, who are skin cancer specialists. The performance of a diagnostic is measured in terms of "*sensitivity*" (the ability to detect disease when disease is present) and "*specificity*" (the ability to exclude disease when disease is not present). In the largest blinded trial that we have performed to date on 352 suspicious pigmented skin lesions, using our most advanced system,

MelaFind® did not miss a melanoma (measured sensitivity of 100%) and achieved 48.4% specificity compared to the study dermatologists' sensitivity of 96.4% and specificity of 28.4%.

We believe that with the assistance provided by MelaFind®, physicians could diagnose more melanomas at the earliest, curable stage, which would reduce both treatment costs and the number of unnecessary biopsies, and improve quality of life.

Our objective is for MelaFind® to become an integral part of the standard of care in melanoma detection.

The Market Opportunity

Cancer of the skin (nonmelanoma and melanoma skin cancers combined) is the most common of all cancers, projected to be over 1.3 million cases in 2005 and estimated to account for more than 50% of all cancers. There are three significant forms of skin cancer: basal cell, accounting for approximately 75% of skin cancer; squamous cell, totaling approximately 20%; and melanoma, which accounts for an estimated 4% of skin cancer cases, but is responsible for approximately 80% of all deaths from skin cancer. The American Cancer Society projects 10,600 deaths from skin cancer in 2005 — 7,800 from melanoma and 2,800 from other skin cancers. Since 1973, the mortality rate for melanoma has increased by 50%. Since approximately 62% of melanomas and 45% of melanoma deaths occur prior to age 65, melanoma places significant burdens on the healthcare system well beyond Medicare.

Melanoma, if left untreated, can be fatal. If diagnosed and removed early in its evolution, when confined to the outermost skin layer and deemed to be "in situ," it is virtually 100% curable. Invasive melanomas that are thin and extend into the uppermost regions of the second skin layer still have excellent cure rates (greater than 90%). However, once the cancer advances into the deeper layers of skin, the risk of metastasis (spreading to other parts of the body) increases. Metastases can occur when the tumor enters into lymphatic channels and newly formed blood vessels, potentially resulting in significant morbidity (illness) and mortality (death). Once the cancer has advanced and metastasized to other parts of the body, it is difficult to treat. At this advanced stage, the five year survival rate is reported to be only 10%. Moreover, survival prospects for those with advanced melanoma have not improved over the past three decades.

Melanoma is currently the subject of significant attention in the medical community. In part, this attention is due to the fact that it is the fastest growing cancer. It is also the most common cancer in young adults ages 20-30, and currently there are more new cases of melanoma than HIV/ AIDS. In women ages 20-29, melanoma is the primary cause of cancer death. In women ages 30-35, melanoma is the second leading cause of death after breast cancer. Recent published papers identify a strong correlation between breast cancer and melanoma.

Because early detection is critical to survival, the American Cancer Society recommends that individuals 40 years and older have complete skin examinations on an annual basis. The 2000 US Census indicates that there are over 100 million Americans over the age of 40 in the US. Furthermore, there are more than 20 million individuals in the US who have dysplastic nevi, a type of pigmented skin lesion that when present is associated with an increased risk of melanoma. Such individuals warrant more frequent observation.

Our Strategy

Our objective is for MelaFind® to become an integral part of the standard of care in melanoma detection. To achieve this objective, we are pursuing the following strategy:

- *Pursue the timely FDA approval of MelaFind®*: We have entered into a binding Protocol Agreement with the FDA for the conduct of the pivotal trial of MelaFind®. Management estimates that the study will commence in early 2006 at over 20 US clinical study sites, and anticipates PMA approval to commercialize MelaFind® in 2007.
- *Establish MelaFind® as the leading technology for assisting in the detection of melanoma:* We have invested considerable capital and expertise into developing our core technology platform, which is

protected by six US patents. We will continue to refine and optimize this technology to ensure that MelaFind® is the leading system for assisting in the detection of melanoma.

- *Obtain third party payor reimbursement to support our recurring revenue pricing model:* We intend to offer MelaFind® on a per patient basis, creating a recurring revenue stream. To do so, we will seek to obtain third party reimbursement as well as private pay alternatives. We are working with experts to create an evidence-based medicine evaluation model consistent with those used to support positive coverage decisions by CMS and private payors for similar products. The value drivers in the model include the cost savings associated with early detection (approximately $168,000 per patient) and fewer biopsies. We believe that the use of MelaFind® could result in substantial savings to the US healthcare system.
- *Commercialize MelaFind® using multiple sales and marketing strategies:* Our internal sales and marketing effort will focus initially on "high volume/key opinion leader" dermatologists with specialties in the diagnosis and treatment of melanoma. To enter the larger US markets of general dermatologists, plastic surgeons, and primary care physicians, and for international markets, we intend to establish partnerships with pharmaceutical and/or diagnostic device companies with an established presence in these markets.

Limitations of Current Melanoma Diagnosis

The current primary method for detecting melanoma is based on physicians' ability to recognize patterns using the naked eye; this is known as clinical examination. Physicians assess pigmented skin lesions using the "ABCDE" criteria, Asymmetry, Border irregularity, Color variation, Diameter greater than 6 mm, and Evolving — change in ABCD over time. This subjective interpretation relies on physician experience and skill. The ratio of benign lesions biopsied to melanomas confirmed can be variable, ranging as high as 40 to 1 for dermatologists and as high as 50 to 1 for primary care physicians. In contrast, MelaFind® delivers an objective assessment based on numerical scores assigned to the suspicious skin lesion under evaluation. Further, clinical examination is limited to the surface appearance of the suspicious pigmented skin lesion, whereas MelaFind® utilizes information derived from up to 2.5 mm deep into the skin.

Dermatologists who specialize in the management of pigmented skin lesions may also use dermoscopy, a method of viewing lesions under magnification. Although dermoscopy provides more information than unaided visual examination, mastery of the technique necessitates many years of training and experience. Proper use of dermoscopy can reduce the number of unnecessary biopsies of benign lesions, but even dermoscopy experts biopsy 3-10 benign lesions for every melanoma detected.

Most dermatologists generally use only visual clinical evaluation for melanoma detection. Consequently, they biopsy up to 40 benign lesions for every melanoma detected. While many primary care physicians immediately refer patients with suspicious pigmented skin lesions to a specialist, an increasing number perform biopsies on skin lesions themselves. Their lack of specialist training in identifying suspect lesions makes their diagnostic accuracy much lower in terms of both sensitivity and specificity. This results in 40% misdiagnosed melanomas and a ratio of benign lesions biopsied to melanomas confirmed of up to 50 to 1.

MelaFind® Product Description

MelaFind® is a non-invasive system for assisting in the early detection of melanoma. The MelaFind® system is comprised of a point-of-care, hand-held imaging device that, in commercial use, is intended to be connected via the internet to a central server in our offices. MelaFind® employs multiple wavelengths of light to obtain data from images of suspicious lesions; the data are analyzed against our proprietary database of melanomas and benign lesions using our sophisticated algorithms. When marketed, a report will be

transmitted to the physician's office containing MelaFind®'s recommendation of whether the lesion should be biopsied. The key components of the MelaFind® system are listed below:

A hand-held imaging device, which is comprised of several components:

- an illuminator that shines 10 different specific wavelengths of light, including near infra-red bands;
- a lens system composed of nine elements that creates images of the light reflected from the lesions;
- a photon (light) sensor; and
- an image processor employing proprietary algorithms to extract many discrete characteristics or features from the images.

Our proprietary database of pigmented skin lesions, which includes *in vivo* MelaFind® images and corresponding histopathological results of over 5,000 biopsied lesions from over 3,500 patients, which we believe to be the largest such database in the US and a substantial barrier to competition.

Our lesion classifiers, which are sophisticated mathematical algorithms that analyze the MelaFind® images and extract lesion feature information from the images; the features are used to classify the lesions as either suspicious for melanoma or not suspicious for melanoma.

A central server located in our offices, which is intended to perform quality control functions and provide diagnostic reports to the physician.

The "brain" of the MelaFind® system, the *Lesion Classifier,* distinguishes melanoma from non-melanoma using the lesion features extracted and measured by the hand-held imaging device. The *Lesion Classifiers* are developed from our proprietary database of pigmented skin lesions and sophisticated mathematical algorithms. The mathematical formulas and algorithms used by the *Lesion Classifiers* are devised and optimized through the process of "classifier training" using lesions from our proprietary database. *Lesion Classifier* development and training is an iterative process involving: (1) selection of the lesion features that provide for optimal lesion discrimination; (2) optimization of the mathematical formulas to differentiate benign lesions from melanoma; and (3) expansion of the size and diversity of our proprietary lesion database. The performance of the *Lesion Classifiers* is directly related to the size of the database used in classifier training, as well as the degree to which the training database is representative of the lesions that will be evaluated by MelaFind® in commercial use.

As with many diagnostic systems, the diagnostic performance of MelaFind® is characterized using two measures: (1) ***sensitivity*** — the ability to detect disease when it is present; and (2) ***specificity*** — the ability to exclude disease when it is not present. Since sensitivity and specificity are typically trade-offs, meaning that as one parameter increases the other decreases, the MelaFind® *Lesion Classifier* is developed and trained with the intention that MelaFind® will detect all melanomas in the training data set with the highest possible specificity.

Reliable functioning of the MelaFind® system is critical to its utility and success in the marketplace. Automated self-calibration tests are performed by the hand-held device to ensure proper functionality. When marketed, the central server will also perform tests on the hand-held device to determine whether its functioning is within appropriate limits. The server will not permit MelaFind® to provide diagnostic information unless the hand-held device is functioning properly.

MelaFind® Regulatory Status

In late 2004, we entered into a binding Protocol Agreement with the FDA for our pivotal clinical study that specified the inclusion criteria, sample size, endpoints, and performance criteria necessary to establish the safety and effectiveness of MelaFind®. The primary endpoints of the study include: (1) greater than 95% (exact binomial lower confidence bound) sensitivity for detection of melanoma; and (2) statistically significant greater specificity in ruling out melanoma when compared to study dermatologists. We initiated a trial under the terms of the Protocol Agreement at the end of 2004. However, technical operational issues with the systems were experienced, requiring further refinement. We are continuing this study as a supportive

pilot trial and are refining the hardware systems. We expect to have new systems available in order to start the pivotal trial in early 2006. The pivotal study for PMA approval of MelaFind® will be conducted under the terms of the Protocol Agreement, which require at least 1,200 pigmented skin lesions, and at least 93 eligible melanomas for analysis.

For commercialization outside the US, approvals from appropriate regulatory bodies within other countries will be required. Once PMA approval is obtained, we may proceed with applications to commercialize in various countries pending further assessment of market opportunities and the possible identification of strategic partners.

Clinical Studies of MelaFind®

Goals and Objectives

MelaFind® has been studied on over 5,000 skin lesions from over 3,500 patients during the past five years at over 20 clinical sites in the US, as well as two sites in Europe and one in Australia. We aim to develop a system with a sensitivity of at least 95% in detecting melanoma. Our goals are to complete pre-commercialization design and testing of the hand-held imaging device and its associated software, as well as to establish a database of approximately 300 melanomas, including *in vivo* MelaFind® images and biopsy results, for MelaFind® *Lesion Classifier* algorithm development and training. Statistically, in order to have a high level of confidence of success, we set the exact binomial lower confidence bound (ELCB) at 99%, which requires approximately 300 melanomas in the classifier training database. To date, the MelaFind® lesion database includes 225 melanomas.

We are developing in parallel several MelaFind® *Lesion Classifiers*, which differ in the algorithms, as well as in the specific lesion features and relative weights used in the mathematical formulas. Prior to conducting the analysis of the data from the pivotal trial under the Protocol Agreement, the optimal *Lesion Classifier* will be selected. The primary means by which the performance of the MelaFind® *Lesion Classifiers* is evaluated is through measures of ***sensitivity*** (the ability to detect disease when present) and ***specificity*** (the ability to exclude disease when not present).

The reference standard used for comparison of the results of MelaFind® and study dermatologists is histopathological analysis of the biopsied lesions by a group of expert dermatohistopathologists. MelaFind® images of pigmented skin lesions (melanomas and non-melanomas) and the histopathological results of the corresponding biopsied lesions comprise our training database of lesions. When the *Lesion Classifiers* are tested on the database used in training, this is called a “training study.” When the *Lesion Classifiers* are tested on a set of lesions not used in training, this is called a “blinded test,” which is a simulation of anticipated real-life prospective classifier performance.

Our ultimate goal for MelaFind® is to demonstrate sensitivity of at least 95%, and superior specificity as compared to study dermatologists in the pivotal blinded test for PMA approval.

MelaFind® Development History — Hardware and Software

In developing the MelaFind® system we have tested both a first and second generation hand-held imaging device, and are in the process of developing a pre-commercialization version for use in our pivotal clinical trial. Our research, development and clinical testing efforts have been designed to improve our MelaFind® technology platform, including the imaging device and lesion classifiers, and to enhance our lesion database.

We began using first generation hand-held imaging devices in clinical studies in 2001. In 2002, we expanded the clinical research program to additional study sites equipped with second generation hand-held imaging devices. The aim of the study, which is ongoing, is to build the MelaFind® proprietary lesion database for use in *Lesion Classifier* training. The study calls for the MelaFind® hand-held imaging device to acquire images of pigmented skin lesions scheduled for biopsy. After biopsy, the histopathological slides are collected and sent for central dermatohistopathological review by a panel of experts.

The results of initial training studies and blinded tests were not to the expected level of performance. We determined the cause to be a flaw in the second generation hand-held imaging devices, which were subsequently shown to exhibit highly variable levels of stray light, an optical artifact. Therefore, we ceased producing this generation of hand-held imaging devices and purged the training database of lesion images acquired with them. We also incorporated a manufacturing specification for stray light which, prior to this time, was not included. Subsequent training studies and blinded tests performed using only first generation hand-held imaging devices confirmed our earlier favorable results: MelaFind® missed none or very few melanomas, and was shown to have higher specificity than study dermatologists, as shown in the tables below. See " — Results of Training Studies and Blinded Tests".

We initiated a clinical study under the terms of the Protocol Agreement with the FDA in late 2004 using first generation hand-held imaging devices. However, several technical operating issues with these older systems were experienced, requiring further refinement. Third generation hand-held imaging devices were produced in 2004 and early 2005. These serve as the basis of the design that is currently being used to generate final, pre-commercialization hand-held imaging devices, which will be utilized in the pivotal study for PMA approval under the terms of the Protocol Agreement.

Along with hardware development efforts, we have also developed, tested, and continue to refine the software components of the system, including lesion filters, calibration algorithms, lesion classification algorithms, and hardware normalization software. We plan to finalize these key elements of the software prior to the analysis of the data obtained from the pivotal trial for PMA approval.

Results of Training Studies and Blinded Tests

The first iteration of MelaFind® *Lesion Classifiers, Lesion Classifiers A-1 and B,* employed a single-step process, that is, an algorithm that differentiates melanoma from all other pigmented skin lesions. These MelaFind® classifiers were trained on a total of 1,129 lesions — 109 melanomas, 70 high grade dysplastic nevi, and 950 other pigmented skin lesions. For the blinded test, a different group of 477 pigmented skin lesions, including 26 melanomas, 11 high grade dysplastic nevi, and 440 other lesions were included. None of these lesions were used in classifier training. The results of the training study and blinded tests for MelaFind® *Lesion Classifiers A-1* and *B,* as well as study dermatologists, are summarized below.

August 2003 — Training Study and Blinded Test Results

	Training Study		Blinded Test	
	Sensitivity	Specificity	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-1*	100%	45.6%	80.8%	44.3%
MelaFind® *Lesion Classifier B*	96.3%	21.9%	80.8%	25.5%
Study Dermatologists	NA	NA	96.2%	17.3%

The performance of the MelaFind® *Lesion Classifiers* on the blinded data set was significantly below results from the training study. The first attempt to improve the performance was by developing a new MelaFind® *Lesion Classifier A,* employing a three-step process *(A-3),* which was accomplished in November 2003. A three-step process employs algorithms that differentiate melanoma from three other classes of pigmented skin lesions. The new classifier was re-trained on the original data set of lesions (109 melanomas, 70 high grade dysplastic nevi, and 950 other pigmented skin lesions), tested on the training set and then tested on the same blinded data set used in August 2003 (26 melanomas, 11 high grade dysplastic nevi, and 440 other lesions). The following table summarizes the results of the tests on the training and blinded data sets. Note that MelaFind® *Lesion Classifier B,* which accommodates a single-step process only, was not evaluated in these exercises.

November 2003 — Training Study and Blinded Test Results

	Training Study		Blinded Test	
	Sensitivity	Specificity	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-3*	100%	28.5%	100%	25.7%
Study Dermatologists	N/A	N/A	96.2%	17.3%

Review of the data indicated that the three-step MelaFind® *Lesion Classifier A-3*, which was trained with lesions acquired from first and second generation MelaFind® hand-held imaging devices, was much less specific on the training database (28.5%) than the single-step classifier MelaFind® *Lesion Classifier A-1*, which was trained on lesions acquired using only first generation hand-held imaging devices (45.6%). A complete analysis of all MelaFind® devices from the clinical sites indicated a systematic difference between the first generation and second generation MelaFind® hand-held imaging devices. The second generation hand-held imaging devices exhibited a significantly greater amount of stray light than the first generation hand-held imaging devices. Stray light induces variable imaging artifacts that cannot be predicted or accounted for in the software algorithms, and introduces higher probability for error. Therefore, in February 2004, all lesions acquired using second generation hand-held imaging devices were removed from the training and testing databases. The three-step MelaFind® *Lesion Classifier A-3* was then trained on a set of lesions acquired solely from first generation hand-held imaging devices including 113 melanomas, 69 high grade dysplastic nevi, and 987 other pigmented skin lesions. A blinded test was conducted on 262 lesions (21 melanoma, 8 high grade dysplastic nevi, and 233 other lesions) not used in classifier training and acquired using first generation hand-held imaging devices only. The following table summarizes the results.

February 2004 — Results of Training Study and Blinded Test after Removing Lesions Obtained from Second Generation Hand-Held Imaging Devices

	Training Study		Blinded Test	
	Sensitivity	Specificity	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-3*	100%	43.8%	100%	44.2%
Study Dermatologists	N/A	N/A	95.0%	28.3%

These results demonstrated the importance of minimizing stray light and establishing a product specification for stray light. This specification was instituted in our assembly process following this analysis. As part of the continued development, a four-step MelaFind® *Lesion Classifier A-4* was introduced in March 2004. A four-step process employs algorithms that differentiate melanoma from four other classes of pigmented skin lesions. This classifier performed better compared with the three-step classifier, as summarized in the following table.

March 2004 — MelaFind® Lesion Classifiers: Three-step vs. Four-step Training Study and Blinded Test Results

	Training Study		Blinded Test	
	Sensitivity	Specificity	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-3*	100%	43.8%	100%	44.2%
MelaFind® *Lesion Classifier A-4*	100%	48.9%	100%	48.1%
Study Dermatologists	N/A	N/A	95.0%	28.3%

Due to the enhanced specificity of the four-step classifier *A-4* compared to the three-step classifier *A-3*, as seen in the preceding table, the four-step classifier was selected for further development and testing. In May 2004, the largest blinded test was performed on a separate set of 352 lesions (including 28 melanomas, 14 high grade dysplastic nevi, and 310 other pigmented skin lesions) that were not used in classifier training. The results of sensitivity and specificity of MelaFind® *Lesion Classifiers A-4 and B* and study dermatologists are summarized in the following table.

May 2004 — Training Study and Blinded Test Results

	Training Study		Blinded Test	
	Sensitivity	Specificity	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-4*	100%	53.2%	100%	48.4%
MelaFind® *Lesion Classifier B*	100%	38.0%	96.4%	32.9%
Study Dermatologists	NA	NA	96.4%	28.4%

In January 2005, with no additional classifier training and in an effort to rigorously test the limits of the MelaFind® *Lesion Classifiers*, another blinded test was performed on 228 new lesions (28 melanomas, 4 high grade dysplastic nevi, and 196 other pigmented skin lesions). The lesions in this blinded test were acquired from the first generation MelaFind® hand-held imaging devices that had been at the clinical sites for a longer period of time than in any blinded test to date. *Lesion Classifier* training was not performed using MelaFind® hand-held imaging devices that had been at the clinical sites for longer periods of time. A new four-step MelaFind® *Lesion Classifier C-4* with a revised step was also evaluated in the blinded test. The results are summarized in the following table.

January 2005 — Second Blinded Test Results using March 2004 Classifiers

	Sensitivity	Specificity
MelaFind® *Lesion Classifier A-4*	82.1%	37.2%
MelaFind® *Lesion Classifier B*	96.4%	21.0%
MelaFind® *Lesion Classifier C-4*	92.9%	35.7%
Study Dermatologists	92.9%	23.0%

In evaluating the MelaFind® hand-held imaging devices used in the January 2005 blinded test, we found that several MelaFind® devices were not performing within specifications. Had these devices performed within specifications, we believe that the sensitivity of MelaFind® *Lesion Classifiers A-4 and C-4* would have been 96.4%, that is, they would have missed a single melanoma, compared to study dermatologists who missed two melanomas.

We are utilizing the findings of the blinded tests to refine the design of hardware to further develop the lesion classification algorithms, to expand the training database, and to develop improved calibration methods to ensure appropriate functioning of each hand-held imaging device. As demonstrated in the January 2005 blinded test, melanomas can be missed when MelaFind® systems that do not meet specifications are used to acquire images, and when melanoma lesion types (for instance, nodular melanomas) are not adequately represented in the training database. In order to address these situations, we have: (1) incorporated a weekly field calibration test to evaluate system performance in order to identify and disable MelaFind® systems that are not functioning within specifications; (2) intensified our effort to obtain images of nodular melanomas for inclusion in the targeted 300 melanoma database for the final *Lesion Classifier;* and (3) refined our algorithms to result in either a positive reading of melanoma when MelaFind® images reveal characteristics well outside the ranges of lesions in the final training database, or to report that MelaFind® cannot provide a diagnosis in this circumstance. As mentioned above, had these devices performed within specifications, we believe that the sensitivity of MelaFind® *Lesion Classifiers A-4 and C-4* would have been 96.4%, that is, they would have missed a single melanoma, compared to study dermatologists who missed two melanomas.

Sales and Marketing

We plan to offer MelaFind® as a point-of-care online service. This approach is intended to provide us with the advantage of recurring revenues corresponding to the number of patients examined and to provide the physician with access to our technology without having to make a significant capital investment.

Our sales and marketing strategy is to initially establish focused sales, marketing, and distribution organization in North America. We plan to focus our commercialization efforts initially on “high volume/key opinion leader” dermatologists who are strongly focused on the diagnosis and treatment of melanoma. For the expansion to the larger US markets of general dermatologists, plastic surgeons, and primary care physicians, and for international markets, we intend to establish development and commercialization partnerships with

pharmaceutical and/or diagnostic device companies with an established competency in the market to accelerate the product introduction and to maximize the breadth of the commercial opportunity. At this time, we have not yet established any commercialization partnerships.

We believe that the ultimate market for MelaFind® is in the primary care setting. When used by primary care physicians, MelaFind® could have a significant public health benefit and a favorable impact on healthcare costs. Primary care physicians are at the front line of early detection, but their lack of specialist training in identifying suspect lesions makes the achievement of a high level of diagnostic accuracy challenging. We believe that MelaFind® can significantly assist primary care physicians in improving their diagnostic acumen.

The MelaFind® Value Proposition for the Healthcare System

We are currently working with experts on a quantitative analysis of the value proposition of the use of MelaFind® by both dermatologists and primary care physicians using Evidence-Based Medicine evaluation techniques. This strategy is consistent with the approach that has been used to support positive coverage decisions by CMS and private payors for other products. The value drivers include: (1) the diagnosis of melanoma at the early curable stages, as opposed to advanced stages, allowing for both a greater opportunity to cure and a reduction in treatment costs by approximately 99%; and (2) reduced number of referrals for evaluation and biopsy of benign pigmented skin lesions. We believe that the use of MelaFind® could result in substantial savings to the US healthcare system.

Our Reimbursement Strategy

We are aware of no Current Procedural Terminology (CPT) code that is specifically applicable to the use of MelaFind®. Therefore, we have engaged the services of expert consultants with extensive experience in the CPT and coverage decision processes to assist us in the submission of appropriate applications to obtain a CPT code(s) and positive coverage decisions from CMS and private payors.

In advance of obtaining a CPT code, we intend to extend our efforts to secure coverage by private payors and state Medicaid agencies. Securing coverage first through private payors and state Medicaid agencies is a common strategy for facilitating national Medicare coverage. Our efforts to secure reimbursement for services using MelaFind® will focus first on private payors and state Medicaid agencies, particularly in sunbelt locations and in areas that have been shown to be underserved by dermatologists.

In the US, healthcare providers that utilize medical systems such as MelaFind®, generally rely on third-party payors, including Medicare, Medicaid, private health insurance carriers, and managed care organizations, to reimburse part, but not necessarily all, of the costs and fees associated with the procedures performed using these devices. Public and professional concern about the cost of medical care and new technologies has evoked a variety of remedies. Third-party payors are increasingly challenging the pricing of medical products and procedures. Guidelines have been established that recognize the need for clinical strategies to assess the cost-effectiveness of new diagnostic tools or procedures (Evidence-Based Medicine), in the hope of reducing the variations in diagnostic and treatment protocols and reducing healthcare expenditures. Insurers are also attempting to curb utilization by applying a rational analysis of the costs versus benefits of new technologies.

The Evidence-Based Medicine evaluation that we are undertaking is central to our efforts to obtain positive coverage decisions from CMS and private insurers. The importance of Evidence-Based Medicine is underscored by recent actions by CMS, including its proposed Covered with Evidence Development initiative designed to provide quicker access to new technologies for beneficiaries while assuring that appropriate evidence for final coverage decisions will be obtained.

We recognize that a favorable reimbursement environment will have a significant impact on MelaFind®'s adoption and commercial success. Even if a procedure is eligible for reimbursement, the level of reimbursement may not be adequate. In addition, third-party payors may deny reimbursement if they determine that the device used in the treatment was not cost-effective or was used for a non-approved indication. We have

anticipated this need and have employed an active strategy to obtain medical coverage, identify appropriate coding and establish adequate payment.

Pending approval of a CPT code and the availability of third party reimbursement, we plan to offer MelaFind® to physicians, who would pay for using MelaFind®, and may or may not charge patients directly for its use. In addition, we believe that roughly ten percent of all dermatological practices are focused on cosmetic dermatology. Most procedures performed in cosmetic dermatological practices and Medi-Spas are provided on a patient self-pay basis. We believe that healthcare consumers that seek these services are likely to pay for MelaFind®, as well.

Competition

We are not aware of any direct competitors to MelaFind®. A number of systems for visualization and assessment of pigmented skin lesions are in use or in development. These include clinical (naked eye) examination, whole body mole mapping systems, dermoscopes (also known as "dermatoscopes"), digital dermoscopes, spectrophotometric intercutaneous analysis, confocal microscopy, and spectrophotometric (color) analysis. These systems rely on physician experience and expertise in recognizing patterns that are associated with melanoma and non-melanoma in order to render an interpretation and diagnosis.

The current primary method for detecting melanoma relies on physicians to interpret whether a pigmented skin lesion is suspicious for melanoma (thereby requiring biopsy) based on their ability to recognize patterns using clinical examination. Physicians use the "ABCDE" criteria, Asymmetry, Border irregularity, Color variation, Diameter greater than 6 mm, and Evolving in ABCD, in their assessment. Whole body mole mapping consists of periodic photography of patients, typically those at high risk for developing melanoma. The pictures are reviewed clinically. This service is provided at some diagnostic imaging centers and dermatology offices. DigitalDerm, Inc. offers a computerized system for acquisition, storage, and review of the pictures.

Dermoscopy, or epiluminescence microscopy, allows for non-invasive visualization of colors and microstructures of the epidermis, the dermal-epidermal junction, and the papillary dermis not visible to the naked eye. Manufacturers of dermoscopes include (but are not limited to) Welch Allyn, Inc. (US), Heine Optotechnik (Germany), and 3Gen, LLC (US). Digital dermoscopes allow for dermoscopic images to be visualized on a computer screen at larger magnification. In addition, images may be stored and compared to images taken previously. Manufacturers of digital dermoscopes include (but are not limited to) Derma Medical Systems, Inc. (Austria), ZN Vision Technologies AG (Germany), Polartechnics, Ltd. (Australia), Linos Photonics, Inc. (Germany), and Biomips Engineering (Italy). Dermoscopy is a tool used by approximately 25% of dermatologists in the US and is associated with a long learning curve. Physicians experienced in the use of dermoscopy have been shown to have an increased diagnostic accuracy of 10 to 20% over clinical examination. Although some digital dermoscopes provide information regarding the probability that a lesion may be melanoma compared to a database of lesions, no system, to our knowledge, is under PMA development for objective interpretation.

A recent published article describes the results of a study utilizing the DB-Mips system from Biomips Engineering. The database of lesions used in this study differs significantly from our proprietary database. For example, our database includes seborrheic keratoses and pigmented basal cell carcinomas, which can be difficult to differentiate from melanoma. The DB-Mips database included none of these lesions. Further, our database includes many more melanomas that are minimally invasive as well as a much higher percentage of dysplastic nevi compared to the DB-Mips database. Minimally invasive melanomas are more difficult to diagnose than melanomas that have significantly invaded the skin, and dysplastic nevi can be very difficult to differentiate from melanoma. Thus, we believe that the DB-Mips database does not include as many pigmented lesions that are difficult to differentiate from melanoma as our database. The specificity of dermatologists in other DB-Mips studies was reported to be over 80% while the specificity of dermatologists in MelaFind® studies is typically under 30%. The DB-Mips system has a reported specificity of up to 79%, which is roughly equivalent to the specificity of the dermatologists in DB-Mips studies.

Spectrophotometric intercutaneous analysis is a technique of visualizing collagen, blood, and pigment. Astron Clinica (UK) manufactures a device utilizing this technique. Confocal microscopy is an experimental approach for non-invasive visualization of skin structures at the cellular level; such a device utilizing this technique is in development by Lucid (US).

A spectrophotometer (color measuring device) is offered by Medical High Technologies S.p.A. (Switzerland). In contrast to MelaFind®, the product does not perform automatic quality control of images and has an external light source. We believe that the reported sensitivity of 80.4% would not gain market approval. Further, we are not aware of comparative data on physicians' performance in corresponding data sets. The system does not have PMA approval, nor are we aware of efforts directed to obtain PMA approval of the product.

The broad market for precision optical imaging devices used for medical diagnosis is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. If our products are approved for marketing, we will potentially be subject to competition from major optical imaging companies, such as General Electric Co., Siemens AG, Bayer AG, Eastman Kodak Company, Olympus Corporation, Carl Zeiss AG Deutschland and others, each of which manufactures and markets precision optical imaging products for the medical market and could decide to develop or acquire a product to compete with MelaFind®.

Manufacturing

We are currently focusing our manufacturing efforts on hardware engineering in order to make the functioning of the MelaFind® hand-held imaging devices more consistent and robust, and to facilitate larger-scale manufacturing methods of the pre-commercialization devices that will be used in the pivotal clinical trial. Data from the clinical studies as well as from engineering tests under stress and different environmental conditions are being used to refine appropriate manufacturing and field specifications before the design is fixed.

For this crucial phase in development, we have contracted with a third-party vendor, ASKION (Gera, Germany), which specializes in precision optics. The pre-commercialization hand-held imaging devices to be assembled by ASKION are expected to be available for pivotal trial initiation planned for early 2006. The pre-commercialization hand-held imaging devices are expected to be more robust while having at least the same or better performance than the hand-held imaging devices used in the clinical program to date.

We have recently been inspected by the FDA for the manufacturing and commercialization of DIFOTI®, our dental cavities detection product that has been discontinued for business reasons. The FDA inspectors observed deficiencies that were documented on FDA Form 483 that was issued to us following the inspection. We have had a follow-up meeting with the FDA and are working with the FDA and consultants to address the inspectional findings, particularly as they relate to current MelaFind® design development and ultimate MelaFind® commercial manufacturing. We believe that the issues can be addressed to the satisfaction of the FDA and will not materially adversely effect our operations.

Research and Development Efforts

Our research and development efforts are currently focused on finalization and validation of the pre-commercialization hand-held imaging device, and completion of the development of the MelaFind® *Lesion Classifiers*. To date, we have developed and tested four-step classifiers (see "Results of Training Studies and Blinded Tests"), and we are currently working on five-step versions. The classifiers have been trained on 113 melanomas to date, and our goal is to use 300 melanomas (and over 4,000 non-melanoma pigmented lesions) for training. To date we have collected over 225 melanomas, which are available for classifier training.

Our R&D plan also includes further improvements such as incorporating wireless technology and an internet connection for hand-held imaging device quality monitoring, as well as faster and easier software downloads for future software versions. The internet based monitoring of the performance of our hand-held imaging device, known as Intelligent Device Management, is intended to enable us to continuously monitor

our hand-held imaging device, advise the user of errors in handling, and thus enhance customer satisfaction and loyalty.

We have performed feasibility studies of a MelaFind® software add-on feature called MelaMeter™, an enhancement to MelaFind® that provides information regarding the depth of penetration of a pigmented skin lesion. This information may be useful to physicians in determining the necessary depth and breadth of biopsy of a pigmented skin lesion. Initial clinical studies of MelaMeter™ demonstrate the ability of MelaMeter™ to non-invasively estimate the Breslow thickness comparably to histopathological examination of excised lesions. We plan to continue the development of MelaMeter™ and seek its FDA approval after receiving PMA approval of MelaFind®.

Following commercialization of MelaFind®, we intend to evaluate the potential use of our light based computer vision platform in other applications, including the non-invasive detection of basal cell carcinoma, the most common skin cancer. New hardware systems for the imaging of blood and blood vessel patterns are needed since the majority of basal cell carcinomas are not pigmented and, accordingly, the MelaFind® system as currently developed is not appropriate for this use. However, we believe MelaFind®'s software programs and algorithms will be applicable.

Intellectual Property

Our policy is to protect our intellectual property by obtaining US and foreign patents to protect technology, inventions and improvements important to the development of our business. To date we have been awarded 14 US patents with numerous foreign counterparts, of which six US patents and two Australian patents relate to various aspects of MelaFind®. In addition, we have applied for two additional US patents and have filed certain foreign patent applications relating to MelaFind®, of which two foreign patent applications are currently in the European regional phase. Also, we have obtained non-exclusive licenses from several of our suppliers for critical components of MelaFind®. We have not granted any significant licenses with respect to our intellectual property.

We cannot be certain that our patents will not be challenged or circumvented by competitors. Whether a patent is infringed and is valid, or whether a patent application should be granted, are all complex matters of science and law, and therefore we cannot be certain that, if challenged, our patents, patent applications and/or other intellectual property rights would be upheld. If one or more of those patents, patent applications and other intellectual property rights are invalidated, rejected or found unenforceable, that could reduce or eliminate any competitive advantage.

We also rely on trade secrets and technical know-how in the manufacture and marketing of MelaFind®. We require our employees, consultants and contractors to execute confidentiality agreements with respect to our proprietary information.

We have obtained US trademark registrations for the following marks: "MelaFind®" and "DIFOTI®," as well as the corporate logo for "eos-electro-optical sciences, inc.®" The goods covered by these registrations are in International Class 010 and US Classes 26, 39 and 44. For MelaFind®, the description of goods and services covered by the trademark is: "medical devices, namely, electro-optical devices incorporating hardware for obtaining images in different spectral bands and software for analyzing the images for use in analyzing skin lesions and determining the existence of melanoma." For DIFOTI®, the description of goods and services covered by the trademark is: "electro-optical apparatus to diagnose dental conditions." For "eos-electro-optical sciences, inc.®", the description of goods and services covered by the trademark is: "instrumentation comprising computer assisted optical imagers and image analyzers for use in the detection of dental cavities, cutaneous melanoma, and other pathologies of the teeth, skin and other tissues." We also have registered the internet domain names: www.eo-sciences.com, www.eosciences.com, www.melafind.com, www.difoti.com, www.smartlightsensors.com, and www.skinsurf.com.

The following table lists the fundamental US patents that cover the MelaFind® methodology, apparatus, and systems:

US Patents Relating to MelaFind®

Patent #	Title	Issued
6,081,612	Systems and Methods for the Multispectral Imaging and Characterization of Skin Tissue	06/27/00
6,208,749	Systems and Methods for the Multispectral Imaging and Characterization of Skin Tissue	03/27/01
6,307,957	Multispectral Imaging and Characterization of Biological Tissue	10/23/01
6,626,558	Apparatus for Uniform Illumination of an Object	09/30/03
6,657,798	Method for Optimizing the Number of Good Assemblies Manufacturable From a Number of Parts	12/02/03
6,710,947	Method for Assembling Lens Elements	03/23/04

We also have developed trade secret calibration methods, classifier programs, and search engines; these programs have been developed over many years and incorporate decades of experience in optical computer vision. In addition, our proprietary MelaFind® database of over 5,000 lesions has been compiled over a number of years and would be difficult to replicate.

FDA Regulation

Our product, MelaFind®, is regulated as a medical device and is subject to extensive regulation by the FDA and other regulatory authorities in the US. The FD&C Act and other federal and state statutes and regulations govern the research, design, development, preclinical and clinical testing, manufacturing, safety, approval or clearance, labeling, packaging, storage, record keeping, servicing, promotion, import and export, and distribution of medical devices.

Unless an exemption applies, each medical device we wish to commercially distribute in the US will require either prior premarket notification, or 510(k) clearance, or PMA approval, from the FDA. The FDA classifies medical devices into one of three classes. Devices requiring fewer controls because they are deemed to pose lower risk are placed in Class I or II. Class I devices are subject to general controls such as labeling, premarket notification, and adherence to the FDA's QSR. Class II devices are subject to special controls such as performance standards, postmarket surveillance, FDA guidelines, as well as general controls. Some Class I and Class II devices are exempted by regulation from the premarket notification, or 510(k), clearance requirement or the requirement of compliance with certain provisions of the QSR. Devices are placed in Class III, which requires approval of a PMA application, if insufficient information exists to determine that the application of general controls or special controls are sufficient to provide reasonable assurance of safety and effectiveness, or they are life-sustaining, life-supporting or implantable devices, or the FDA deems these devices to be "not substantially equivalent" either to a previously 510(k) cleared device or to a "preamendment" Class III device in commercial distribution before May 28, 1976, for which PMA applications have not been required. The FDA classifies MelaFind® as a Class III device, requiring PMA approval.

A PMA application must be supported by valid scientific evidence, which typically requires extensive data, including technical, pre-clinical, clinical, manufacturing and labeling data, to demonstrate to the FDA's satisfaction the safety and effectiveness of the device. A PMA application must include, among other things, a complete description of the device and its components, a detailed description of the methods, facilities and controls used to manufacture the device, and proposed labeling. A PMA application also must be accompanied by a user fee, unless exempt. For example, the FDA does not require the submission of a user fee for a small business's first PMA. After a PMA application is submitted and found to be sufficiently complete, the FDA begins an in-depth review of the submitted information. During this review period, the FDA may request additional information, or clarification of information already provided. Also during the review

period, an advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. In addition, the FDA generally will conduct a pre-approval inspection of the manufacturing facility to ensure compliance with the QSR, which requires manufacturers to follow design, testing, control, documentation and other quality assurance procedures.

We commenced the PMA application process for MelaFind® by filing a proposed Shell for a three module PMA on September 30, 2002. We filed as a Small Business Entity exempt from the user fee requirement. The Shell was accepted and two Modules have been filed and reviewed. The third Module will include the results of the pivotal clinical study, and cannot be filed until after that study is complete and its results have been evaluated. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- MelaFind® may not be safe or effective to the FDA's satisfaction;
- the data from our pre-clinical studies and clinical trials may be insufficient to support approval;
- the manufacturing process or facilities we use may not meet applicable requirements; and
- changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluations of both the PMA application and the manufacturing facilities are favorable, the FDA will either issue an approval letter, or approvable letter, which usually contains a number of conditions which must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device for certain indications. If the FDA's evaluation of the PMA or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA may also determine that additional clinical trials are necessary, in which case the PMA approval may be delayed while the trials are conducted and the data acquired is submitted in an amendment to the PMA. Even with additional trials, the FDA may not approve the PMA application. The PMA process can be expensive, uncertain and lengthy and a number of devices for which FDA approval has been sought by other companies have never been approved for marketing.

New PMA applications or PMA supplements may be required for modifications to the manufacturing process, labeling and device specifications, materials or design of a device that is approved through the PMA process. PMA supplements often require submission of the same type of information as an initial PMA application, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA application, and may not require as extensive clinical data or the convening of an advisory panel.

Clinical trials are almost always required to support a PMA application, and are sometimes required for a 510(k) clearance. These trials generally require submission of an application for an IDE to the FDA. We have not been required to file an IDE for the MelaFind® clinical studies because FDA has considered the trials "non-significant risk" (NSR) studies subject to abbreviated IDE regulations, which do not require formal IDE submission. An IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of patients, unless the product is deemed a non-significant risk device and eligible for more abbreviated IDE requirements. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent form are approved by appropriate institutional review boards at the clinical trial sites. The FDA's approval of an IDE allows clinical testing to go forward, but does not bind the FDA to accept the results of the trial as sufficient to prove the product's safety and effectiveness, even if the trial meets its intended success criteria. All clinical trials must be conducted in accordance with the FDA's IDE regulations that govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. As stated above, the clinical studies of MelaFind® are considered by the FDA as NSR. Consequently, the trials are conducted under the auspices of an abbreviated IDE. Clinical

trials must further comply with the FDA's regulations for IRB approval and for informed consent. Required records and reports are subject to inspection by the FDA. The results of clinical testing may be unfavorable or, even if the intended safety and effectiveness success criteria are achieved, may not be considered sufficient for the FDA to grant approval or clearance of a product. The commencement or completion of any of our clinical trials may be delayed or halted, or be inadequate to support approval of a PMA application, or 510(k) clearance, for numerous reasons, including, but not limited to, the following:

- the FDA, other regulatory authorities, or an IRB do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- patients do not enroll in clinical trials at the rate we expect;
- physicians do not comply with trial protocols;
- patient follow-up is not at the rate we expect;
- patients experience adverse side effects;
- IRBs and third-party clinical investigators may delay or reject our trial protocol;
- third-party clinical investigators decline to participate in a trial or do not perform a trial on our anticipated schedule or consistent with the clinical trial protocol, GCPs or other FDA requirements;
- third-party organizations do not perform data collection and analysis in a timely or accurate manner;
- regulatory inspections of our clinical trials or manufacturing facilities may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials, or invalidate our clinical trials;
- changes in governmental regulations or administrative actions; and
- the interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness.

Our clinical trials may not generate favorable data to support any PMA applications, and we may not be able to obtain such approvals on a timely basis, or at all. Delays in receipt of or failure to receive such approvals, the withdrawal of previously received approvals, or failure to comply with existing or future regulatory requirements would have a material adverse effect on our business, financial condition and results of operations. Even if granted, the approvals may include significant limitations on the intended use and indications for use for which our products may be marketed.

After a device is approved or cleared and placed in commercial distribution, numerous regulatory requirements apply. These include:

- establishment registration and device listing;
- QSR, which requires manufacturers to follow design, testing, control, documentation and other quality assurance procedures;
- labeling regulations, which prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling;
- medical device reporting regulations, which require that manufacturers report to the FDA if a 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 it were to recur; and
- corrections and removal reporting regulations, which require that manufacturers report to the FDA 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 FD&C Act that may present a risk to health.

Also, the FDA may require us to conduct postmarket surveillance studies or order us to establish and maintain a system for tracking our products through the chain of distribution to the patient level. The FDA

enforces regulatory requirements by conducting periodic, unannounced inspections and market surveillance. Inspections may include the manufacturing facilities of our subcontractors. Thus, we must continue to spend time, money, and effort to maintain compliance.

Failure to comply with applicable regulatory requirements, including those applicable to the conduct of our clinical trials, can result in enforcement action by the FDA, which may lead to any of the following sanctions:

- warning letters;
- fines and civil penalties;
- unanticipated expenditures;
- delays in approving or refusal to approve our applications, including supplements;
- withdrawal of FDA approval;
- product recall or seizure;
- interruption of production;
- operating restrictions;
- injunctions; and
- criminal prosecution.

We and our contract manufacturers, specification developers, and some suppliers of components, are also required to manufacture our products in compliance with cGMP requirements set forth in the QSR. The QSR requires a quality system for the design, manufacture, packaging, labeling, storage, installation and servicing of marketed devices, and includes extensive requirements with respect to quality management and organization, device design, equipment, purchase and handling of components, production and process controls, packaging and labeling controls, device evaluation, distribution, installation, complaint handling, servicing, and record keeping. The FDA enforces the QSR through periodic unannounced inspections that may include the manufacturing facilities of our subcontractors. We expect that our manufacturing facility and those of our subcontractors will be subject to domestic and international regulatory inspection and review. If the FDA believes we or any of our contract manufacturers or regulated suppliers are not in compliance with these requirements, it can shut down our manufacturing operations, require recall of our products, refuse to approve new marketing applications, institute legal proceedings to detain or seize products, enjoin future violations, or assess civil and criminal penalties against us or our officers or other employees. Any such action by the FDA would have a material adverse effect on our business. We cannot assure you that we will be able to comply with all applicable FDA regulations.

Government Regulation

The advertising of our MelaFind® product will be subject to both FDA and Federal Trade Commission regulations. In addition, the sale and marketing of MelaFind® will be subject to a complex system of federal and state laws and regulations intended to deter, detect, and respond to fraud and abuse in the healthcare system. These laws and regulations restrict and may prohibit pricing, discounting, commissions and other commercial practices that may be typical outside of the healthcare business. In particular, anti-kickback and self-referral laws and regulations will limit our flexibility in crafting promotional programs and other financial arrangements in connection with the sale of our products and related services, especially with respect to physicians seeking reimbursement through Medicare or Medicaid. These federal laws include, by way of example, the following:

- the anti-kickback statute prohibits certain business practices and relationships that might affect the provision and cost of healthcare services reimbursable under Medicare, Medicaid and other federal healthcare programs, including the payment or receipt of remuneration for the referral of patients whose care will be paid by Medicare or other federal healthcare programs;

- the physician self-referral prohibition, commonly referred to as the Stark Law, which prohibits referrals by physicians of Medicare or Medicaid patients to providers of a broad range of designated healthcare services in which the physicians or their immediate family members have ownership interests or with which they have certain other financial arrangements;
- the anti-inducement law, which prohibits providers from offering anything to a Medicare or Medicaid beneficiary to induce that beneficiary to use items or services covered by either program;
- the Civil False Claims Act, which prohibits any person from knowingly presenting or causing to be presented false or fraudulent claims for payment by the federal government, including the Medicare and Medicaid programs; and
- the Civil Monetary Penalties Law, which authorizes HHS to impose civil penalties administratively for fraudulent or abusive acts.

Sanctions for violating these federal laws include criminal and civil penalties that range from punitive sanctions, damage assessments, money penalties, imprisonment, denial of Medicare and Medicaid payments, or exclusion from the Medicare and Medicaid programs, or both. These laws also impose an affirmative duty on those receiving Medicare or Medicaid funding to ensure that they do not employ or contract with persons excluded from the Medicare and other government programs.

Many states have adopted or are considering legislative proposals similar to the federal fraud and abuse laws, some of which extend beyond the Medicare and Medicaid programs to prohibit the payment or receipt of remuneration for the referral of patients and physician self-referrals regardless of whether the service was reimbursed by Medicare or Medicaid. Many states have also adopted or are considering legislative proposals to increase patient protections, such as limiting the use and disclosure of patient-specific health information. These state laws typically impose criminal and civil penalties similar to the federal laws.

In the ordinary course of their business, medical device manufacturers and suppliers have been and are subject regularly to inquiries, investigations and audits by federal and state agencies that oversee these laws and regulations. Recent federal and state legislation has greatly increased funding for investigations and enforcement actions, which have increased dramatically over the past several years. This trend is expected to continue. Private enforcement of healthcare fraud also has increased, due in large part to amendments to the Civil False Claims Act in 1986 that were designed to encourage private persons to sue on behalf of the government. These whistleblower suits by private persons, known as *qui tam* relators, may be filed by almost anyone, including physicians and their employees and patients, our employees, and even competitors. HIPAA, in addition to its privacy provisions, created a series of new healthcare-related crimes.

Environmental Regulation

Our research and development and clinical processes involve the handling of potentially harmful biological materials as well as hazardous materials. We and our investigators and vendors are subject to federal, state and local laws and regulations governing the use, handling, storage and disposal of hazardous and biological materials and we incur expenses relating to compliance with these laws and regulations. If violations of environmental, health and safety laws occur, we could be held liable for damages, penalties and costs of remedial actions. These expenses or this liability could have a significant negative impact on our financial condition. We may violate environmental, health and safety laws in the future as a result of human error, equipment failure or other causes. Environmental laws could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We are subject to potentially conflicting and changing regulatory agendas of political, business and environmental groups. Changes to or restrictions on permitting requirements or processes, hazardous or biological material storage or handling might require an unplanned capital investment or relocation. Failure to comply with new or existing laws or regulations could harm our business, financial condition and results of operations.

International Regulation

International sales of medical devices are subject to foreign government regulations, which may vary substantially from country to country from having no regulations to having a premarket notice or premarket acceptance. The time required to obtain approval in a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ. There is a trend towards harmonization of quality system standards among the European Union, US, Canada and various other industrialized countries.

The European Union, which includes most of the major countries in Europe, has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Devices that comply with the requirements of a relevant directive will be entitled to bear the CE conformity marking, indicating that the device conforms to the essential requirements of the applicable directives and, accordingly, can be commercially distributed throughout Europe. The method of assessing conformity varies depending on the class of the product, but normally involves a combination of self-assessment by the manufacturer and a third party assessment by a "Notified Body." This third party assessment may consist of an audit of the manufacturer's quality system and specific testing of the manufacturer's product. An assessment by a Notified Body of one country within the European Union is required in order for a manufacturer to commercially distribute the product throughout the European Union. As part of the CE compliance, manufacturers are required to comply with the ISO 9000 series of standards for quality operations. Other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the European Union with respect to medical devices. Outside of the European Union, regulatory approval needs to be sought on a country-by-country basis in order for us to market our products.

Product Liability and Insurance

Our business exposes us to the risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices, including those which may arise from the misuse or malfunction of, or design flaws in, our products. We may be subject to product liability claims if MelaFind® causes, or merely appears to have caused, an injury. Claims may be made by patients, healthcare providers or others involved with MelaFind®. MelaFind® will require from the FDA approval prior to commercialization in the US. The clinical studies of MelaFind® are considered by the FDA as NSR. Consequently, the trials are conducted under the auspices of an abbreviated IDE. We therefore do not maintain domestic clinical trial liability insurance. We have placed clinical trial liability insurance in certain European countries where required by statute or clinical site policy. Although we have general liability insurance that we believe is appropriate, and anticipate obtaining adequate product liability insurance before commercialization of MelaFind®, this insurance is and will be subject to deductibles and coverage limitations. Our anticipated product liability insurance may not be available to us in amounts and on acceptable terms, if at all, and, if available, the coverages may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we will be exposed to significant liabilities, which may harm our business.

Employees

As of May 15, 2005, we had 28 full-time and two part-time employees, of whom 14 were engaged in research and development (including clinical and regulatory affairs), seven in production (including document control and quality assurance) and nine in marketing, sales and administrative activities. We believe that our relationship with our employees is good.

Facilities

We lease approximately 2,800 square feet of office space at 3 West Main Street, Suite 201, Irvington, New York, and an additional 3,700 square feet of office, laboratory, and assembly space in an adjacent building with the street address of 1 Bridge Street, Suite 15, Irvington, New York. The lease on the 2,800 square feet of space expires in November 2010. The lease on the 3,700 square feet of space expires in June

2005, and we have orally agreed with the landlord to extend this lease through June 2009 and we intend to enter into a lease agreement which will evidence this extension. We believe that these facilities are adequate to meet our current and reasonably foreseeable requirements. We believe that we will be able to obtain additional space, if required, on commercially reasonable terms.

Legal Proceedings

We are not currently a party to any legal proceedings.

Discontinued Business

As of April 5, 2005, we decided to discontinue all operations associated with our DIFOTI® product, a non-invasive imaging device for the detection of dental cavities, in order to focus our resources on the development and commercialization of Melafind®. We are currently seeking an acquirer for the DIFOTI® assets. Once a disposition relating to the DIFOTI® assets is complete, we do not expect to have any significant continuing responsibility for the DIFOTI® business.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the names, ages as of May 15, 2005 and a brief account of the business experience of each person who is a current executive officer or director of our company and each person who has been elected to serve as a director effective upon the close of this offering. Each director of our company will hold office until the next annual meeting of shareholders of our company or until his successor has been elected and qualified.

Name	Age	Position
Joseph V. Gulfo, M.D.	42	Director, President and Chief Executive Officer
Karen Krumeich	51	Vice President, Finance, Chief Financial Officer and Treasurer
Jon I. Klippel	50	Vice President, Marketing and Sales
William R. Bronner	59	Vice President, Legal Counsel and Compliance
Breaux Castleman(1)(2)	64	Director, Chairman of the Board of Directors
Sidney Braginsky(1)	67	Director
George C. Chryssis(1)	58	Director
Martin D. Cleary(2)(3)(4)	59	Director Elect
Dan W. Lufkin(2)(3)	73	Director
Gerald Wagner, Ph.D.	61	Director

(1) Member of Compensation Committee

(2) Member of Nominating and Governance Committee

(3) Member of Audit Committee

(4) Director elected to serve effective as of the completion of this offering

Executive Officers

Joseph V. Gulfo, M.D., M.B.A. has served as our President and Chief Executive Officer and a member of our board of directors since January 2004. From May 1999 to November 2004, he served as Chairman, Chief Executive Officer and President of Antigen Express, Inc., a development-stage company developing immunodiagnostics and therapeutics for cancer. Dr. Gulfo serves as a director of ProCertus BioPharm, Inc., a privately-held company. Dr. Gulfo received a B.S. in Biology from Seton Hall University, an M.D. from the University of Medicine and Dentistry of New Jersey and an M.B.A. in Finance from Seton Hall University.

Karen Krumeich has served as our Vice President, Finance and Chief Financial Officer since January 2005 and Treasurer since May 2005. From August 2004 to January 2005 she served as a financial consultant with Horn Murdock Cole, a financial consulting firm. From September 2002 to July 2004, she served as divisional Chief Financial Officer of the hospital group division of Henry Schein, Inc., a publicly-held medical and dental products distributor. From March 2000 to August 2002, she served as a financial consultant with Consulting Associates, a financial consulting firm. Ms. Krumeich received her B.S. in Pharmacy from the University of Toledo College of Pharmacy and completed additional coursework in accounting at Cleveland State University.

Jon I. Klippel has served as our Vice President, Marketing and Sales since December 2004. From April 2004 to November 2004, he was a marketing and sales consultant. From January 2003 to March 2004, he served as Senior Marketing Manager of PDI, Inc., a publicly-traded company offering outsourced marketing, sales and sale support services to biopharmaceutical and medical device companies. From February 2002 to December 2002, he was a marketing and sales consultant. From July 2000 to February 2002, he served as Director of Marketing and Business Development at National Imaging Associates, Inc., a privately-held diagnostic imaging management company. Mr. Klippel received a B.A. in Political Science from Albright College and an M.B.A. from Rutgers University Graduate School of Business.

William R. Bronner has served as our Vice President, Legal Counsel and Compliance since July 2000 and as our Secretary since May 2002. From 1986 to July 2000, Mr. Bronner served as Vice President, General Counsel and Secretary of Kronos, Inc. Mr. Bronner received a B.A. in Government from Dartmouth College and a J.D. from Columbia University Law School.

Our executive officers are elected by, and serve at the discretion of our board of directors. There are no family relationships between our directors and executive officers.

Non-Executive Directors

Breaux Castleman has served as a member of our board of directors and Chairman of our board since July 2003. Since August 2001, he has served as President, Chief Executive Officer and Chairman of Syntiro Healthcare Services, Inc. Mr. Castleman also serves as a director of FemPartners, Inc., Integrated Diagnostic Centers, Inc. and Radiology Practice Management, Inc., each of which are privately-held companies. From December 1999 to July 2001, he served as Chief Executive Officer of Physia Corp. He served as President of Scripps Clinic from July 1996 to October 1999. He holds a B.A. in economics from Yale University and attended New York University Graduate School of Business Administration.

Sidney Braginsky has served as a member of our board of directors since 2001. Since 2001, he has also served as the Chairman and Chief Executive Officer of Digilab, LLC, a spectroscopy instruments manufacturer. He served as President of Olympus America, Chairman of Atropos, Inc., and as a director for Noven Pharmaceuticals, Inc., as well. Mr. Braginsky received his B.S. in biology from Queens College.

George C. Chryssis has served as a member of our board of directors since 2001. Since 2003, he has served as President, Chief Executive Officer and Chairman of the Board of MISTsoft Corp., a privately-held software company which he founded. Since 2000, he has served as the Managing Member of Arcadian Capital Management, LLC, and General Partner of Arcadian Venture Partners, LP, a venture capital firm with investments in early stage technology companies, including EOS. Since 2003, he has also served as Chairman of the Board of Directors of DelCom Corp., a privately-held telecommunications software company. Mr. Chryssis received a B.S. and M.S. in electrical engineering from Northeastern University.

Martin D. Cleary will become a member of our board of directors upon completion of this offering. Since February 2003, he has served as the President and Chief Executive Officer of Juvaris Biotherapeutics, Inc., a company engaged in the development of therapeutic vaccines for cancer and infectious diseases. From September 1999 to May 2002, he served as the President and Chief Executive Officer of Genteric, Inc., a company engaged in non-viral gene delivery. Mr. Cleary received a B.S. in accounting from Rutgers University in 1971, and a certificate in international studies from Columbia University in 1973.

Dan W. Lufkin has served as a member of our board of directors since July 2003. He is also a co-founder and former Chairman of the investment banking firm, Donaldson, Lufkin & Jenrette, Inc. Mr. Lufkin currently serves as a consultant to and/or board member of a number of private companies and non-profit endeavors. Mr. Lufkin received a B.A. degree from Yale University and an M.B.A. from Harvard Business School.

Gerald Wagner, Ph.D. was appointed as a member of our board of directors in May 2005. Since 2002, he has owned and operated Gerald Wagner Consulting LLC, an international consulting company specializing in: international project management; technology and application consulting; and company assessments. From March 1992 to September 2003, he was a Senior Vice President, Lab Testing Systems, at Bayer, Inc. Mr. Wagner received a Masters and Ph.D. in electro-mechanical design from Technical University, Darmstadt, Germany.

Board of Directors Composition

Our current charter documents and the charter documents we expect to be in effect upon completion of this offering authorize up to nine (9) directors. We currently have six (6) directors and expect to have seven (7) directors upon completion of the initial public offering. Certain of our current directors were elected pursuant to voting provisions contained in a voting agreement that we entered into with certain holders or our

common stock and preferred stock. Upon the closing of this offering, the voting agreement will be terminated and none of our stockholders will have any special rights regarding board representation.

Board Committees

Audit Committee. The current members of our audit committee are Messrs. Braginsky and Lufkin, each of whom we believe satisfies the independence requirements of the NASDAQ National Market and the SEC. Mr. Cleary will join the audit committee upon completion of the offering and will chair the committee. We believe Mr. Cleary satisfies the independence requirements of the NASDAQ National Market and the SEC. In addition, we believe Mr. Cleary is qualified as an audit committee financial expert under the regulations of the SEC, and has the accounting and related financial management expertise required by the NASDAQ National Market. Our audit committee assists our board in its oversight of:

- the integrity of our financial statements;
- our independent registered public accounting firm's qualifications and independence; and
- the performance of our independent auditors.

The audit committee has the sole and direct responsibility for appointing, evaluating and retaining our independent registered public accounting firm and for overseeing their work. All audit services to be provided to us and all non-audit services, other than de minimis non-audit services, to be provided to us by our independent auditors must be approved in advance by our audit committee.

Compensation Committee. The members of our compensation committee are Messrs. Castleman, Braginsky and Chryssis, each of whom we believe satisfies the independence requirements of the NASDAQ National Market and the SEC. Mr. Castleman chairs this committee. The purpose of our compensation committee is to discharge the responsibilities of our board of directors relating to compensation of our executive officers. Specific responsibilities of our compensation committee include:

- reviewing and recommending compensation of our executive officers;
- administering our stock incentive plans; and
- reviewing and recommending incentive compensation and equity plans.

Nominating and Governance Committee. The members of our nominating and governance committee are Messrs. Lufkin and Castleman, each of whom we believe satisfies the independence requirements of the NASDAQ National Market. Mr. Lufkin will chair this committee. Mr. Cleary will join the nominating and governance committee upon completion of the offering. Our nominating and governance committee:

- identifies and recommends nominees for election to our board of directors;
- develops and recommends our corporate governance principles; and
- oversees the evaluation of our board of directors and management.

Compensation Committee Interlocks and Insider Participation

We did not have a compensation committee until May 2005. Dr. Gulfo, our Chief Executive Officer, previously participated in the deliberations regarding executive compensation. None of our executive officers has served as a member of the compensation committee, or other committee serving an equivalent function, of any other entity, one of whose executive officers served as a member of our compensation committee.

Election of Directors

The number of directors is determined by the stockholders at their annual meeting, subject to the right of the stockholders to change such number between annual meetings and to the right of our board to increase such number between annual meetings.

Director Compensation

After completion of this offering, in addition to reimbursement of expenses incurred in attending meetings of our board of directors and committees of our board, our non-employee directors will receive an annual fee of $10,000 for serving as directors and an additional $500 per meeting for each meeting attended, whether in person or by telephone. In addition, after completion of this offering, the chairman of our board of directors, the chairman of our audit committee and the chairman of our nominating and governance committee will each receive an annual fee of $10,000. After completion of this offering, each member of our board who is not a company employee will receive an annual stock option grant to purchase up to 5,000 shares of common stock. Such stock options will vest in full upon the first anniversary of issuance and have an exercise price equal to the fair market value of our common stock on the date of the grant. In addition, we reimburse each member of our Board who is not a company employee for reasonable travel and other expenses in connection with attending meetings of the Board.

Scientific and Medical Advisory Committee

We have established a Scientific and Medical Advisory Committee made up of leading experts in the fields of dermatology and oncology. Members of our Scientific and Medical Advisory Committee consult with us regularly on matters relating to:

- our research and development programs;
- the design and implementation of our clinical trials;
- market opportunities from a clinical perspective;
- new technologies relevant to our research and development programs; and
- scientific and technical issues relevant to our business.

The current members of our Scientific and Medical Advisory Committee are:

Name	Professional Affiliation
Jeffrey P. Callen, M.D.	Professor and Chief of the Division of Dermatology, University of Louisville School of Medicine; Member of the Board of Directors of the American Board of Dermatology, Inc.
Armand B. Cognetta, Jr., M.D.	Dermatologist in private practice with Dermatology Associates of Tallahasee; Member, American Academy of Dermatology; former President of Florida Society of Dermatology; former President of Dermatology Photography Society.
Robert Friedman, M.D.	Clinical Assistant Professor, Department of Dermatology, New York University School of Medicine; Past Director, American Cancer Society, New York City Division, and Member, Professional Education Committee; American Academy of Dermatology: Member, Skin Cancer/ Melanoma Committee, Past Chairman, Industry Liaison Committee.

Name	Professional Affiliation
Alfred W. Kopf, M.D.	Clinical Professor of Dermatology at New York University School of Medicine; Head of the Oncology Section of the Skin and Cancer Unit at New York University Medical Center; member of the Board of Directors of the International Foundation for Dermatology; Past President, American Academy of Dermatology; Past President, American Board of Dermatology; Past President, American Dermatological Association; and Past Chairman of the Board of Directors, International Foundation for Dermatology.
Martin C. Mihm, Jr., M.D.	Professor and Chief of Dermatopathology at Harvard Medical School; Chief of Dermatopathology at Massachusetts General Hospital; Co-Director of the Pigmented Skin Lesion Clinic at Massachusetts General Hospital; Co-Chairman of the Melanoma Pathology Program of the World Health Organization; Co-Director of the Rare Tumor Institute of the World Health Organization; member of the editorial and advisory board of the American Journal of Dermatopathology and the International Journal of Surgical Pathology; Member of the American Academy of Dermatology; New England Pathology Society; American Society of Dermatopathology; American Society of Clinical Oncology; and College of American Pathologists.
Harold S. Rabinovitz, M.D.	Dermatologist in private practice with Skin and Cancer Associates in Plantation, Florida; Voluntary Professor of Dermatology at the University of Miami-School of Medicine; Associate Editor of the Journal of Dermatologic Surgery; member of the Board of Directors of the South Florida Dermatology Foundation.
Darrell S. Rigel, M.D.	Clinical Professor of Dermatology, New York University Medical Center; Secretary and Treasurer of the American Dermatological Association; Past President, American Academy of Dermatology; Member, Board of Directors of the American Cancer Society New York City Division and Chairman of its Subcommittee on Skin Cancer.
Arthur J. Sober, M.D.	Professor of Dermatology, Harvard Medical School; Member, American Joint Commission on Cancer.

Medical Advisor and Liaison to Our Board of Directors

Robert Friedman, M.D., a member of our Scientific and Medical Advisory Committee, serves as a medical advisor to our board of directors and a liaison between our Scientific and Medical Advisory Committee and our board of directors. See “Consulting Agreements — Consulting Agreement with Robert Friedman, M.D.”

Executive Compensation

The following table sets forth summary compensation information for the years ended December 31, 2002, December 31, 2003 and December 31, 2004 for our chief executive officer and each of our two other most highly compensated executive officers whose salary and bonus for 2004 was more than $100,000. As of December 31, 2004, there were no other persons serving as executive officers. We have also included summary compensation information for two executive officers who would have been among the four other most highly compensated executive officers whose salary and bonus for 2004 would have been more than $100,000 had they served as executive officers for the full year. We refer to these officers collectively as our named executive officers.

Summary Compensation Table

		Annual Compensation		Long Term Compensation	
Name and Principal Position	Year	Salary ($)	Bonus ($)	Securities Underlying Options	All Other Compensation
Joseph V. Gulfo, M.D.	2004	$ 173,656	—	81,753(1)	$ 19,880(1)
President and Chief	2003	—	—	—	—
Executive Officer	2002	—	—	—	—
Marek Elbaum, Ph.D.	2004	173,549	—	10,000	—
Founder and former Chief Science	2003	81,085	—	29,071	—
and Technology Officer	2002	30,204	—	—	—
William Bronner	2004	132,612	—	37,000	—
Vice President, Legal Counsel	2003	106,255	—	32,161	—
and Compliance	2002	26,444	—	1,875	—
Karen Krumeich(2)	2004	—	—	60,000	—
Vice President Finance, Chief	2003	—	—	—	—
Financial Officer	2002	—	—	—	—
Jon I. Klippel(3)	2004	9,346	—	45,000	—
Vice President Marketing	2003	—	—	—	—
and Sales	2002	—	—	—	—

(1) Dr. Gulfo has been granted another stock option which is not reflected in this table because the number of shares purchasable under the option can only be calculated at the time of PMA approval of MelaFind®. The number of shares granted under this option is equal to that number of shares of our common stock equal to four percent of our fully-diluted capital stock at that time of PMA approval of MelaFind® minus 81,753 shares of our common stock. The exercise price of this option is $0.46 per share.

(2) Ms. Krumeich's employment with us began in January 2005 at an annual salary of $165,000.

(3) Mr. Klippel's employment with us began in December 2004 at an annual salary of $135,000.

Stock Options Granted in 2004

The following table provides information regarding stock options granted during 2004 to the named executive officers in that period. We have not granted any stock appreciation rights.

Name	Number of Securities Underlying Options Granted	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price Per Share(1)	Expiration Date	Potential Realizable Value of Assumed Annual Rates of Stock Price Appreciation for Option Term(2)	
					5%	10%
Joseph V. Gulfo, M.D.(3)	75,227	11.07%	$ 0.46	2/02/09	$ l	$ l
	6,526	0.09	0.46	2/02/09	l	l
Marek Elbaum, Ph.D.(4)	10,000	1.47	0.46	2/02/09	l	l
Karen Krumeich	60,000	8.82	0.46	12/17/09	l	l
William R. Bronner	17,000	2.50	0.46	2/02/09	l	l
	20,000	2.94	0.46	12/17/09	l	l
Jon I. Klippel	45,000	6.62	0.46	12/17/09	l	l

(1) Exercise price is equal to the fair market value on the date of grant as determined by our board of directors.

(2) The dollar amounts under these columns are the result of calculations at rates set by the SEC and, therefore, are not intended to forecast possible future appreciation, if any, in the price of the underlying common stock. The potential realizable values are calculated using an assumed initial public offering price of $ l per share, the mid-point of our filing range, and assuming that the market price appreciates from this price at the indicated rate for the entire term of each option and that each option is exercised and sold on the last day of its term at the assumed appreciated price. Actual gains, if any, on stock option exercises depend on the future performance of the common stock and overall stock market conditions. The amounts reflected in the following table may not necessarily be achieved.

(3) Dr. Gulfo has been granted another stock option which is not reflected in this table because the number of shares purchasable under the option can only be calculated at the time of PMA approval of MelaFind®. The number of shares granted under this option is equal to that number of shares of our common stock equal to four percent of our fully-diluted capital stock at that time of PMA approval of MelaFind® minus 81,753 shares of our common stock.

(4) Formerly our Chief Science and Technology Officer.

Aggregated Option Exercises in 2004 and Year-End Option Values

The following table provides information about the number of shares issued upon option exercises by our named executive officers as of December 31, 2004 and the value realized by our named executive officers. The table also provides information about the number and value of options held by our named executive officers at December 31, 2004.

Name	Number of Unexercised Securities Underlying Options at December 31, 2004		Value of Unexercised In-the-Money Options at December 31, 2004(1)	
	Exercisable	Unexercisable	Exercisable	Unexercisable
Joseph V. Gulfo, M.D.(2)	71,535	10,218	$ l	$ l
Marek Elbaum, Ph.D.(3)	14,070	25,000	$ l	$ l
Karen Krumeich	0	60,000	$ l	$ l
William R. Bronner	49,160	21,875	$ l	$ l
Jon I. Klippel	0	45,000	$ l	$ l

(1) There was no public trading market for our common stock as of December 31, 2004. Accordingly, as permitted by the rules of the SEC, we have calculated the value of unexercised in-the-money options assuming an initial public offering price of $ l per share, the mid-point of our filing range, less the aggregate exercise price, without taking into account any taxes that might be payable in connection with the transaction.

(2) Dr. Gulfo has been granted another stock option which is not reflected in this table because the number of shares purchasable under the option can only be calculated at the time of PMA approval of MelaFind®. The number of shares granted under this option is equal to that number of shares of our common stock equal to four percent of our fully-diluted capital stock at that time of PMA approval of MelaFind® minus 81,753 shares of our common stock.

(3) Formerly our Chief Science and Technology Officer.

Equity Compensation Plans

2005 Stock Incentive Plan

In 2005, we adopted our 2005 Stock Incentive Plan (2005 Plan). The 2005 Plan permits the granting of awards to key employees, directors, officers, consultants and scientific collaborators in the form of incentive or nonqualified stock options and equity-based awards. Stock options granted under the 2005 Plan may be "incentive stock options" meeting the requirements of Section 422 of the Code or nonqualified stock options, which do not meet the requirements of Section 422. Stock awards granted under the 2005 Plan to eligible participants may take the form of the issuance and transfer to the recipient of shares of common stock or a grant of stock units representing a future right to such shares of common stock. As of the date of this offering, there are 1,000,000 shares of our common stock authorized and reserved for issuance upon exercise of options which may be granted under the 2005 Plan and no options or other equity based awards have been issued under the 2005 Plan. Pursuant to the 2005 Plan on each of January 1, 2006 and January 1, 2007, the number of shares of common stock authorized for issuance will be automatically increased by an amount equal to 3% of the then outstanding shares of common stock unless the board decides to reduce the amount of the increase.

2003 Stock Incentive Plan

In 2003, we adopted our 2003 Stock Incentive Plan, as amended (2003 Plan). The 2003 Plan permitted the granting of awards to our employees and other key persons (including directors, officers, consultants and scientific collaborations) in the form of restricted stock, and incentive or nonqualified stock options. Stock options granted under the 2003 Plan may be "incentive stock options" meeting the requirements of Section 422 of the Code or nonqualified stock options which do not meet the requirements of Section 422. As of May 15, 2005, options to purchase 639,697 shares of our common stock are outstanding under the 2003 Plan. No options or other equity-based awards have been granted under the 2003 Plan since the adoption of the 2005 Plan, and no further options or other equity-based awards are issuable under the 2003 Plan. As of May 15, 2005, no options granted under the 2003 Plan have been exercised.

1996 Stock Option Plan

In 1996, we adopted our 1996 Stock Option Plan (1996 Plan). The 1996 Plan permitted the granting of awards to our officers, key employees, directors and collaborating scientists in the form of incentive or nonqualified stock options. Stock options granted under the 1996 Plan may be "incentive stock options" meeting the requirements of Section 422 of the Code or nonqualified stock options which do not meet the requirements of Section 422. Since the adoption of the 2003 Plan, we have not granted any stock options under the 1996 Plan. As of May 15, 2005, options to purchase 260,178 shares of our common stock are outstanding under the 1996 Plan. No further options or other equity-based awards are issuable under the 1996 Plan. As of May 15, 2005, no options granted under the 1996 Plan have been exercised.

Employment Agreement

Employment Agreement with Joseph V. Gulfo, M.D.

On January 5, 2004, we entered into an employment agreement with Dr. Joseph V. Gulfo, our President and Chief Executive Officer. Pursuant to the agreement, Dr. Gulfo is required to devote substantially all of his business time, attention and efforts to the performance of his duties under the agreement. The initial term of the employment agreement extends until December 31, 2005 and will automatically renew for successive twelve-month (12) terms unless either party sends a written notice of termination within 90 days of the expiration of the initial term or renewal term, as the case may be.

The employment agreement provides Dr. Gulfo with an annual base salary of $175,000 subject to periodic review by our board of directors. Our board of directors has determined that Dr. Gulfo was entitled to a review and salary increase in an amount to be agreed by Dr. Gulfo and the Company as a result of the equity financing consummated in October 2004, but to date our board of directors has not conducted a review or granted a salary increase. Dr. Gulfo is also entitled to receive yearly bonuses at the discretion of our board of directors. The target for such bonuses is 50% of Dr. Gulfo's then current base salary.

In addition, Dr. Gulfo is entitled to be reimbursed for certain travel expenses up to $1,100 per month, $2,000 per month for lodging expenses and for certain communication expenses, including cellular phone service and broadband internet service.

If Dr. Gulfo's employment is terminated by us without cause or Dr. Gulfo resigns for good reason, then Dr. Gulfo would be entitled to receive severance pay equal to 15 months of his then current base salary and, if Dr. Gulfo is then covered by health insurance provided by us, the cost to Dr. Gulfo of COBRA coverage for 15 months. If we elect not to renew Dr. Gulfo's employment agreement, Dr. Gulfo is entitled to an amount equal to his then current base salary for nine months and, if Dr. Gulfo is covered by our health insurance policy at such time, the cost of COBRA for nine months (subject to reduction to the extent Dr. Gulfo received comparable benefits from a subsequent employer during such nine month period).

Dr. Gulfo is subject to a non-compete covenant upon termination of his employment by us or him. The term of Dr. Gulfo's non-compete covenant is one (1) year, which can be extended to two (2) years in the event we elect to pay him additional severance equal to twelve (12) months of his base salary at the time of termination and his most recent bonus (if any).

The employment agreement provides for three separate grants of stock options. As of May 15, 2005, the first two stock option grants for the purchase of a total of 81,753 shares of our common stock at an exercise price of $0.46 per share have fully vested. The number of shares of our common stock subject to the third stock option can only be calculated at the time of PMA approval of MelaFind®. The number of shares purchasable under this option at an exercise price of $0.46 per share is equal to that number of shares of our common stock equal to four percent of our fully-diluted capital stock at the time of PMA approval of MelaFind® minus the number of shares of common stock underlying options granted to Dr. Gulfo under the employment agreement, which is 81,753. Assuming that l shares are outstanding as of the completion of this offering and remain the total number of shares outstanding on the date we receive PMA approval of MelaFind®(assuming in both cases the exercise of all outstanding options and warrants and the conversion of all convertible securities), the number of shares subject to this option would be l . This third stock option grant vests 50% at the time of PMA approval of MelaFind®, and the remaining 50% vests in four equal installments over the one year period following such PMA approval of MelaFind®.

Consulting Agreements

Consulting Agreement with Breaux Castleman

In June 2003, we entered into a consulting agreement with Breaux Castleman for consulting services related to FDA approval of MelaFind®, administrative matters, financial reporting, and our business and financial strategy. Under this agreement, Mr. Castleman receives compensation for each month of services rendered. During 2003 Mr. Castleman was paid at the rate of $8,000 for each month of services rendered and thereafter from 2004 onward he has been paid at the rate of $2,000 for each month of services rendered. We

made payments pursuant to this consulting agreement of $48,000 in 2003, $22,000 in 2004, and $12,000 in 2005. These payments did not exceed $60,000 in any twelve-month period since June 2003. In connection with our consulting agreement with Mr. Castleman, we granted Mr. Castleman a restricted stock award of 75,000 shares of our common stock under our 2003 Plan for an aggregate purchase price of $34,500. Mr. Castleman issued an interest-bearing promissory note in the principal amount of $34,500 as payment for these shares. To date, no payments have been made under this note. Our consulting agreement with Mr. Castleman is terminable by either party on 30 days' written notice.

Consulting Agreement with Marek Elbaum, Ph.D.

Pursuant to a consulting agreement effective as of May 31, 2005, we retained Marek Elbaum, Ph.D., our founder and former Chief Science and Technology Officer, as our Chief Scientist to provide services relating to the integration of our product development, mentoring and advising our staff scientists, providing new product vision, supporting of our research and development and providing such other services as assigned to him by our Chief Executive Officer. Pursuant to the consulting agreement, Dr. Elbaum will provide us with a majority of his business time in consideration of a monthly fee of approximately $14,500. The term of such agreement extends for a period of two years and is automatically renewable for an additional one year period unless either Dr. Elbaum or we decide to not so renew. In the event of a non-renewal, and in the event that Dr. Elbaum's services terminate as a result of his death or disability, we will pay to Dr. Elbaum a termination fee of $100,000. In addition, upon termination of the consulting agreement for any reason other than a termination by us for cause, we will pay to Dr. Elbaum for 18 months an amount equal to what Dr. Elbaum would have had to pay to extend his insurance coverage under COBRA. Dr. Elbaum is subject to a non-compete covenant during the term of the consulting agreement and for a period of two years after the term of the consulting agreement. We have also agreed that all stock options previously granted to Dr. Elbaum will continue to vest in accordance with their original terms.

Consulting Agreement with Robert Friedman, M.D.

Pursuant to a consulting agreement effective as of June 1, 2005, we have retained the services of Robert Friedman, M.D. for an initial term of one year as a consultant, medical advisor to our board of directors, and as a liaison between our board of directors and our Scientific and Medical Advisory Committee, and in connection with the clinical testing of MelaFind®. In consideration of rendering of these services, Dr. Friedman will be paid at a rate of $5,000 per day (assuming an eight-hour day) for up to 30 days of service. The consulting agreement is automatically renewed for successive one-year terms unless either party terminates the agreement at least 30 days prior to the expiration of the agreement.

Consulting Agreement with Gerald Wagner, Ph.D.

Pursuant to a consulting agreement dated as of June 1, 2005 with Gerald Wagner Consulting LLC (GWC), a company owned and operated by Dr. Gerald Wagner, GWC has agreed to direct our MelaFind® product development efforts and oversee the manufacturing process for a period that began June 1, 2005 and ends three months following the initiation of our pivotal clinical trial of MelaFind®. The consulting agreement provides for a flat fee of $150,000, payable ratably over the course of the term, and the grant to Dr. Wagner immediately after completion of this offering of a non-qualified stock option to purchase up to 50,000 shares of our common stock at the public offering price per share.

Limitation of Liability and Indemnification of Directors and Officers

Our fourth amended and restated certificate of incorporation and third amended and restated bylaws provide that we will indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. Our fourth amended and restated certificate of incorporation and third amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether the bylaws would permit indemnification. We maintain directors' and officers'

liability insurance. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

RELATED PARTY TRANSACTIONS

We also describe below certain other transactions with our directors, executive officers and stockholders.

Common Stock

In June 2003, we sold 75,000 shares of our common stock at a price of $0.46 per share to Dr. Robert Friedman, a former member of our board of directors, and 75,000 shares of our common stock at a price of $0.46 per share to Breaux Castleman, a member of our board of directors, and the chairman of our board. In May 2004, we issued 125,000 shares of our common stock at a per share purchase price of $0.46 to investors who loaned an aggregate of $1,000,000 to EOS, which loans were evidenced by convertible promissory notes, all of which converted into shares of our series C preferred stock on October 26, 2004.

Preferred Stock

All share numbers and share prices presented below for our preferred stock do not reflect the 1-for-2 reverse stock split approved by our board of directors on May 13, 2005 with respect to our common stock. The reverse split will be effective after the conversion of our preferred stock and thus the shares of our common stock into which our preferred stock will convert will be subject to the reverse stock split.

In 1998, we issued 198,000 shares of our series A preferred stock at a per share purchase price of $5.00 to 22 accredited investors for an aggregate consideration of $990,000. All shares of series A preferred stock will convert into an aggregate of 115,201 shares of our common stock upon completion of this offering.

In 2000 and 2001, we issued an aggregate of 947,986 shares of our series B preferred stock in three transactions at per share purchase prices of $5.1282 and $6.50 to 149 accredited investors for an aggregate consideration of $5,894,409. The rights of the holders of series B preferred stock were identical except for the purchase prices paid for such stock. The purchasers of our series B preferred stock included Arcadian Venture Partners L.P., a venture fund with which George C. Chryssis, a member of our board of directors, is affiliated, and Double D Venture Fund, LLC, a venture fund with which Sidney Braginsky, a member of our board of directors, is affiliated.

On June 20, 2003, we issued an aggregate of 45,000 shares of our series B preferred stock to the original series B preferred stock investors in consideration of certain amendments to their investment agreements, bringing the total number of shares of our series B preferred stock outstanding to 992,986. All shares of our series B preferred stock will convert into an aggregate of 575,532 shares of our common stock upon completion of this offering.

From June 2003 to October 2004, we sold an aggregate of 5,414,779 shares of our series C preferred stock (together with warrants to purchase an aggregate of 2,610,643 shares of our common stock, all of which warrants will be converted into an aggregate of 1,305,313 shares of our common stock pursuant to the warrant exchange described below under “Warrants to Purchase Common Stock”) to 73 accredited investors for an aggregate consideration of $12,191,480. These investors included: Breaux Castleman, a member of our board of directors and chairman of our board; Dr. Robert Friedman, a member of our scientific and medical advisory committee and former member of our board of directors; Double D Venture Fund, LLC, a venture fund with which Sidney Braginsky, a member of our board of directors, is affiliated; and Dan W. Lufkin, a member of our board of directors. All shares of our series C preferred stock will convert into an aggregate of 2,707,372 shares of our common stock upon completion of this offering.

Warrants to Purchase Preferred Stock

In June 2003, we issued a warrant to purchase up to 24,890 shares of our series C preferred stock at an exercise price of $2.26 per share to Koji Miyazaki, one of our series C preferred stock investors.

In February 2004, we issued a warrant to purchase up to 121,681 shares of our series C preferred stock with an exercise price $2.26 per share to Health Partners I, LLC (HP I). In November 2004, HP I was dissolved and this warrant, together with all shares of our series C preferred stock and warrants to purchase our common stock previously issued to HP I, were distributed to HP I's members, which included: Dr. Robert Friedman, a member of our scientific and medical advisory committee and a former member of our board of directors; Breaux Castleman, a member of our board of directors and chairman of our board; and Dan W. Lufkin, a member of our board of directors. Assuming conversion of our preferred stock immediately prior to completion of this offering, these warrants and the warrant issued to Mr. Miyazaki will be exercisable for an aggregate of 73,280 shares of our common stock at an exercise price of $4.52 per share.

Warrants to Purchase Common Stock

Prior to the closing of this offering, we will consummate an exchange of warrants to purchase our common stock for shares of our common stock under a plan of recapitalization to be adopted by our board of directors. During the period from June 2003 through October 2004, we issued warrants to purchase an aggregate of up to 2,610,643 shares of our common stock to certain holders of our series C preferred stock. All of these warrants have an exercise price of $13.00 per share. In June 2003, we also issued a warrant to Dr. Marek Elbaum, our former Chief Science and Technology Officer, to purchase up to 25,000 shares of our common stock at per share exercise price of $13.00. In December 2004, we issued a warrant to Allen & Company LLC to purchase up to 75,000 shares of our common stock at an exercise price of $7.00 per share (Allen & Company Warrant) in consideration of Allen & Company's agreement to provide certain advisory services to us. Warrants to purchase a total of 2,610,643 shares of our common stock will be exchanged for a total of 1,305,321 shares of our common stock based on an exchange ratio of one share of our common stock for every two shares of our common stock purchasable under the warrants (Warrant Exchange).

After completion of the Warrant Exchange, the only warrants that will remain outstanding as of the date of this offering are the Allen & Company Warrant, the underwriters' warrant (see "Underwriting") and warrants to purchase an aggregate of 146,571 shares of our series C preferred stock, which assuming conversion of our preferred stock will be exercisable for an aggregate of 73,280 shares of our common stock.

Options

From inception to May 15, 2005, we have granted on aggregate of 523,489 options to our current directors and named executive officers, with exercise prices ranging from $0.46 to $10.00 per share.

PRINCIPAL STOCKHOLDERS

The following tables set forth as of May 15, 2005, and as adjusted to reflect the sale of the shares offered hereby, certain information regarding beneficial ownership of our common stock by:

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

The percentage of ownership indicated in the following table is based on 6,513,164 shares of common stock outstanding on May 15, 2005 and l shares of common stock outstanding immediately following the completion of this offering, each of which assumes the conversion of all outstanding shares of our preferred

stock and consummation of the Warrant Exchange. The table assumes no exercise of the underwriters' over-allotment option.

Information with respect to beneficial ownership has been furnished by each director, officer, beneficial owner of more than 5% of our common stock or selling stockholder and is determined in accordance with the rules of the SEC. Except as indicated by footnote and subject to community property laws where applicable, to our knowledge, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. In computing the number of shares beneficially owned by a person and the percentage of ownership of that person, shares of common stock subject to options or warrants held by that person that are currently exercisable or will become exercisable within 60 days after May 15, 2005 are deemed outstanding, while such shares are not deemed outstanding for purposes of computing percentage ownership of any other person.

	Number of Shares of Common Stock Beneficially Owned		Percentage of Shares Beneficially Owned	
Name of Beneficial Owner	Shares	Options and Warrants Exercisable Within 60 Days	Before the Offering	After the Offering
Named Executive Officers				
Joseph V. Gulfo, M.D.	—	81,753	1.2%	l
Marek Elbaum, Ph.D.(1)	462,500	14,070	7.3	l
Karen Krumeich	—	60,000	*	l
William R. Bronner	4,850	70,285	1.1	l
Jon I. Klippel	—	45,000	*	l
Directors				
Breaux Castleman	91,570	6,168	1.5	l
Sidney Braginsky(2)	51,500	5,000	*	l
George C. Chryssis(3)	94,717	12,500	1.6	l
Dan W. Lufkin(4)	356,231	29,187	5.9	l
All directors and named executive officers as a group (all 9 persons)	1,061,368	323,963	20.3%	l
Holders of more than 5%				
Patricia and Stanley Brilliant(5)	349,532	2,342	5.4	l
Caremi Partners Ltd.(6)	917,767	11,693	14.2	l
Eric Dobkin(7)	351,523	7,015	5.5	l

* Less than one percent.

(1) Marek Elbaum, Ph.D. resigned as a director and our Chief Science and Technology Officer effective as of May 31, 2005.

(2) Includes 51,500 shares of common stock held by Double D Venture Fund, LLC, an investment fund with which Mr. Braginsky is affiliated. Mr. Braginsky expressly disclaims ownership of these shares.

(3) Includes 94,717 shares of common stock held by Arcadian Venture Partners, L.P., an investment fund with which Mr. Chryssis is affiliated. Mr. Chryssis expressly disclaims ownership of these shares.

(4) Includes 140,570 shares of common stock held by trusts the beneficiaries of which are family members of Mr. Lufkin and 5,840 shares of common stock issuable upon exercise of Series C preferred stock warrants. Mr. Lufkin expressly disclaims ownership of the shares held by these trusts.

(5) Patricia and Stanley Brilliant are husband and wife. Their business address is: 180 East End Avenue, Apt. 4A, New York, NY 10128.

(6) The business address of Caremi Partners, Ltd. is: c/o Steven B. Ruchefsky, 2 American Lane, Greenwich, CT 06836.

(7) The business address of Eric Dobkin is: 160 Old Church Lane, Pound Ridge, NY 10576.

DESCRIPTION OF CAPITAL STOCK

The following information describes our common stock and preferred stock and provisions of our fourth amended and restated certificate of incorporation and our third amended and restated bylaws as in effect upon the closing of this offering. This description is only a summary. You should also refer to the fourth restated certificate of incorporation and third amended and restated bylaws which will be filed with the SEC as exhibits to our registration statement of which this prospectus forms a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur upon the receipt of the requisite board and stockholder approvals and upon the closing of this offering in accordance with the terms of the fourth amended and restated certificate of incorporation.

Upon completion of this offering, and after giving effect to the conversion of all outstanding convertible preferred stock into common stock and the amendment of our fourth amended and restated certificate of incorporation, our authorized capital stock will consist of 30,000,000 shares of common stock, $0.001 par value per share, and 10,000,000 shares of preferred stock, $0.10 par value per share. As of May 15, 2005, there were 6,513,164 shares of our common stock outstanding held of record by 242 stockholders.

Common Stock

Subject to preferences that may be applicable to any shares of preferred stock outstanding at the time, the holders of common stock are entitled to the following:

Dividends. The holders of outstanding shares of our common stock are entitled to receive dividends out of assets legally available for the payment of dividends at the times and in the amounts as our board of directors from time to time may determine, subject to any preferential dividend rights of any holder of outstanding shares of our preferred stock.

Voting. Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders, including the election of directors. We have not provided for cumulative voting for the election of directors in our fourth restated certificate of incorporation. This means that the holders of a majority of the shares voted can elect all of the directors then standing for election.

Preemptive rights, conversion and redemption. Our common stock is not entitled to preemptive rights and is not subject to conversion or redemption.

Liquidation, dissolution and winding-up. Upon our liquidation, dissolution or winding-up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preferences of any preferred stock.

Each outstanding share of common stock is, and all shares of common stock to be issued in this offering when they are paid for, will be duly and validly issued, fully paid and non-assessable.

Options

As of May 15, 2005, options to purchase a total of 899,875 shares of common stock were outstanding, which amount is 54,391 shares less than the number of shares issuable under such option plans as of March 31, 2005 due to the effect of a formula-based option granted to our President and Chief Executive Officer — see “Management — Employment Agreement”. All options issued under the 2003 Plan or issuable under the 2005 Plan are subject to 180-day lock-up provisions under the terms of the 2003 Plan and the 2005 Plan, respectively. Options to purchase a total of 1,000,000 shares of common stock remain available for grant under the 2005 Plan. Following this offering, no options to purchase, or other equity-based awards with respect to shares of our common stock, will be available under the 2003 Plan or the 1996 Plan.

Preferred Stock

Upon the closing of this offering, all outstanding shares of our preferred stock will convert into an aggregate of 3,398,105 shares of common stock.

Following the offering, our board of directors will be authorized, subject to the limits imposed by the Delaware General Corporation Law, to issue 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any of its qualifications, limitations and restrictions. Our board of directors can also increase or decrease the number of shares of any series, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that adversely affect the voting power or other rights of our common stockholders. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, financings and other corporate purposes, could have the effect of delaying, deferring or preventing a change in control and may cause the market price of our common stock to decline or impair the voting and other rights of the holders of our common stock. We have no current plans to issue shares of preferred stock.

Warrants

See "Related Party Transactions — Warrants to Purchase Preferred Stock" and "Related Party Transactions — Warrants to Purchase Common Stock."

Registration Rights

Under a second amended and restated investors' rights agreement, following this offering, the holders of l shares of common stock have the right to require us to register their shares with the SEC so that those shares may be publicly resold or to include their shares in any registration statement we file with the SEC.

Demand Rights

At any time after the earlier of October 26, 2009 or the date which is one year after the effective date of this offering, if the holders of more than 20% of the outstanding shares of common stock issued or issuable upon conversion of our existing series B preferred stock or series C preferred stock or upon exercise of warrants to purchase our common stock held by holders of our existing series B preferred stock or series C preferred stock, request that we file a registration statement with the SEC having an aggregate offering price to the public (after deduction of underwriter's discounts and expenses) of not less than $2,000,000, we are obligated to use our commercially reasonable efforts to cause such shares to be registered and to include in such registration, if requested, additional shares of our common stock requested to be included by holders of registration rights who deliver a written notice to us within 20 days of our receipt of notice from the initiating holders. We are only required to effect two such registrations, and we are not required to effect any such registration during period commencing 90 days before a company initiated registration and ending 90 days after a company initiated registration. Our board of directors has the right to defer for not more than 90 days and not more than twice in any 12-month period any such registration if in its good faith judgment such registration would be detrimental to us and not in our best interest.

If we are eligible to file a registration statement on Form S-3, holders of shares having registration rights have the right to demand on or prior to the fifth anniversary of the effective date of this offering that we file a registration statement on Form S-3. We are only required to effect two such registrations in any 12-month period, and we are not required to effect any such registration during period commencing 90 days before a company-initiated registration and ending 90 days after a company-initiated registration.

Piggy Back Registration Rights

The holders of shares having registration rights are entitled to unlimited "piggy-back" registration rights on all registrations of our stock other than a registration relating solely to employee benefit plans, a registration on Form S-4 or any other form that does not permit secondary sales or a registration pursuant to the demand rights described above. Pursuant to the lock-up agreements we expect to enter into with our directors, officers and certain stockholders, any such person holding "piggy-back" registration rights will waive such rights with respect to this offering.

Limitations on Registration Rights

We and the underwriters of any underwritten offering will have the right to limit the number of shares having registration rights to be included in the registration statement. The underwriters have excluded any sales by existing investors in this offering.

Expenses of Registration

We shall bear all registration expenses, exclusive of underwriting discounts, selling commissions, stock transfer taxes and fees and disbursements of counsel for the holders of registration rights (other than customary fees of one counsel in the case of a demand registration), of all demand and piggy-back registrations.

Delaware Anti-Takeover Law

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, or Delaware law, regulating corporate takeovers. In general, these provisions prohibit a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

- the transaction is approved by the board of directors before the date the interested stockholder attained that status;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or
- on or after the date the business combination is approved by the board of directors and authorized at a meeting of stockholders, by at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines "business combination" to include the following:

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

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

A Delaware corporation may opt out of this provision either with an express provision in its original certificate of incorporation or in an amendment to its certificate of incorporation or bylaws approved by its stockholders. However, we have not opted out of this provision. The statute could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us.

Provisions of our Certificate of Incorporation and Bylaws and Certain Regulatory Requirements That May Have an Anti-Takeover Effect or Entrench Current Management

Our fourth amended and restated certificate of incorporation and third amended and restated bylaws will contain certain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and the policies formulated by our board of directors. These provisions are also expected to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with us. These provisions, as well as certain provisions of contracts to which we are a party, may discourage or hinder attempts to acquire us or remove incumbent directors or management even if some, or a majority, of our stockholders believe that such action is in their best interest.

Certificate of Incorporation and Bylaws.

The provisions in our fourth amended and restated certificate of incorporation and third amended and restated bylaws with the intent described above include:

- *Vacancies Filled by the Board.* Vacancies on our board of directors may be filled by a majority of the remaining directors (even if they constitute less than a quorum), or by a sole remaining director.
- *Removal of Directors.* None of our directors may be removed other than for cause.
- *Stockholder Meetings.* Only our board of directors, the chairman of our board of directors or our chief executive officer may call special meetings of stockholders. Stockholders cannot call special meetings of stockholders.
- *No Action by Written Consent.* Stockholders may take action only at an annual or special meeting of stockholders. Stockholders may not act by written consent.
- *Requirements for Advance Notification of Stockholder Proposals and Director Nominations*. Stockholders must comply with advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors. In general, these provisions will provide that notice of intent to nominate a director or raise matters at such meetings must be received in writing by us not less than 90 nor more than 120 days prior to the anniversary of the date of the proxy statement for the previous year's annual meeting of stockholders, and must contain certain information concerning the person to be nominated or the matters to be brought before the meeting and concerning the stockholder submitting the proposal.
- *No Cumulative Voting.* There is no cumulative voting in the election of directors.
- *"Blank Check" Preferred Stock*. We will be authorized to issue, without any further vote or action by the stockholders, up to 10,000,000 shares of preferred stock in one or more classes or series and, with respect to each such class or series, to fix the number of shares constituting the class or series and the designation of the class or series, the voting powers (if any) of the shares of the class or series, and the preferences and relative, participating, optional and other special rights, if any, and any qualifications, limitations or restrictions, of the shares of such class or series.
- *Regulatory Approval.* We are also required to obtain the approval of certain regulatory agencies, such as the NASD, for certain transactions that could result in a change of control. See "Our Business — Regulation."

Transfer Agent and Register

The transfer agent and registrar for the common stock is the American Stock Transfer and Trust Company.

Listing

We have applied to have our common stock approved for listing, subject to official notice of issuance, on the NASDAQ National Market under the symbol “MELA”. We have not applied to list our common stock on any other exchange or quotation system.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options and warrants or in the public market after this offering, or the anticipation of those sales, could adversely affect the price of our common stock from time to time and could impair our ability to raise capital through sales of our equity securities. Upon completion of this offering, we will have outstanding an aggregate of l shares of common stock, after giving effect to the issuance of l shares of common stock in this offering and the conversion of all outstanding shares of our convertible preferred stock into an aggregate of 3,398,105 shares of our common stock.

Sales of Restricted Shares

Of the shares to be outstanding after the completion of this offering, the l shares sold in this offering will be freely tradable without restriction under the Securities Act of 1933, as amended (Securities Act) unless purchased by our “affiliates,” as that term is defined in Rule 144 under the Securities Act. Of the remaining l shares of common stock, l are held by “affiliates” and therefore are “restricted securities” within the meaning of Rule 144. All of these restricted securities and all other shares of common stock other than those sold in this offering will be subject to the 270-day lock-up period described below. After the 270-day lock-up period, these restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144, 144(k) or 701 promulgated under the Securities Act, which are summarized below. Sales of the restricted securities in the public market, or the availability of such shares for sale, could adversely affect the market price of our common stock.

Our directors, officers and certain significant stockholders intend to enter into lock-up agreements in connection with the offering generally providing that they will not offer, sell, contract to sell or grant any option to purchase or otherwise dispose of our common stock or any securities exercisable for or convertible into our common stock owned by them for a period of 270 days after the date of this prospectus without the prior written consent of the underwriters, which consent may be withheld in their sole discretion. Such shareholders may make gifts of our common stock within the restricted period provided the recipient agrees in advance to be bound by the lock-up restrictions. Taking into account the lock-up agreements, and assuming the underwriters do not release any stockholders from these agreements, the number of restricted shares that will be available for sale in the public market under the provisions of Rule 144, 144(k) and 701 will be as follows:

- beginning on the effective date of this prospectus, only the shares sold in the offering will be immediately available for sale in the public market; and
- beginning 180 days after the effective date, approximately l shares of our restricted shares will be eligible for sale subject to the volume, manner of sale and other limitations under Rule 144.
- beginning 365 days after the effective date, approximately l shares of our restricted shares will be eligible for sale subject to the volume, manner of sale and other limitations under Rule 144.
- beginning 180 days after the effective date, approximately l shares of our restricted shares will be eligible for sale as unrestricted shares under Rule 144(k).

In general, under Rule 144 as currently in effect, after the expiration of the lock-up agreements, a person who has beneficially owned restricted securities for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal approximately l shares immediately after the offering; or
- the average weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale.

Sales under Rule 144 are also subject to requirements with respect to manner of sale, notice and the availability of current public information about us. Under Rule 144(k), generally, a person who is not deemed to have been our affiliate at any time during the three months preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years, is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144.

Rule 701

In general, under Rule 701 of the Securities Act as currently in effect, any of our employees, directors or consultants who purchased shares of our common stock from us in connection with our stock option plans before the effective date of the registration statement of which this prospectus is a part, or who hold stock options as of that date, may rely on the resale provisions of Rule 701. Under Rule 701, these persons who are not our affiliates may generally sell their eligible securities, commencing 90 days after the effective date of the registration statement in reliance on Rule 144, but without compliance with some of the restrictions, including the holding period and volume limitations contained in Rule 144. Rule 152 under the Securities Act provides a safe harbor for transactions not involving any public offering even if the issuer subsequently files a registration statement. Also, Rule 701 states that offers and sales exempt under Rule 701 are deemed to be part of a single, discrete offering and are not subject to integration with other offers or sales (whether registered or not). We therefore believe that the issuance of common stock upon the exercise of options by our employees, directors or consultants should not be integrated with the issuance of common stock in this offering.

Subject to the 180-day lock-up period described above, as of l, holders of vested options exercisable for approximately l shares of our common stock will be eligible to exercise their options and to sell their shares in accordance with Rule 701.

Stock Options

We intend to file a registration statement under the Securities Act covering the shares of common stock reserved for issuance upon exercise of outstanding options under our 2005 Plan, our 2003 Plan and our 1996 Plan. The registration statement is expected to be filed 270 days after the closing of this offering and become effective as soon as practicable after filing. Accordingly, shares registered under the registration statement will be available for sale in the open market after the effective date of the registration statement subject to manner of sale, public information, volume limitation and notice provisions of Rule 144 applicable to our affiliates, and any limitations on sale under the applicable option plan and the lock-up agreements described above. See “Risk Factors — If there are substantial sales of our common stock, our stock price could decline.”

MATERIAL US FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS FOR NON-US HOLDERS

The following is a general discussion of the material US federal income and estate tax consequences of the ownership and disposition of our common stock by a non-US holder that purchases shares pursuant to this offer. As used in this discussion, the term non-US holder means a beneficial owner of our common stock that is not, for US federal income tax purposes:

- an individual who is a citizen or resident of the US;
- a corporation or partnership (including any entity treated as a corporation or partnership for US federal income tax purposes) created or organized in or under the laws of the US or any State thereof or the District of Columbia, other than a partnership treated as foreign under US Treasury regulations;
- an estate whose income is includible in gross income for US federal income tax purposes regardless of its source; or
- a trust (1) if a US court is able to exercise primary supervision over the administration of the trust and one or more US persons have authority to control all substantial decisions of the trust, or (2) that has a valid election in effect under applicable Treasury regulations to be treated as a US person.

This discussion does not consider:

- US federal gift tax consequences, US state or local or non-US tax consequences;
- specific facts and circumstances that may be relevant to a particular non-US holder's tax position, including, if the non-US holder is a partnership or trust that the US tax consequences of holding and disposing of our common stock may be affected by certain determinations made at the partner or beneficiary level;
- the tax consequences for the stockholders, partners or beneficiaries of a non-US holder;
- special tax rules that may apply to particular non-US holders, such as financial institutions, insurance companies, tax-exempt organizations, hybrid entities, US expatriates, broker-dealers, and traders in securities; or
- special tax rules that may apply to a non-US holder that holds our common stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment.

The following discussion is based on provisions of the Code, applicable US Treasury regulations and administrative and judicial interpretations, all as in effect on the date of this prospectus, and all of which are subject to change, retroactively or prospectively. The following summary assumes that a non-US holder holds our common stock as a "capital asset" within the meaning of section 1221 of the Code (generally, property held for investment). Each non-US holder should consult a tax advisor regarding the US federal, state, local and non-US income and other tax consequences of acquiring, holding and disposing of shares of our common stock.

Dividends

We do not plan to pay any dividends on our common stock for the foreseeable future. However, in the event that we pay dividends on our common stock, we will have to withhold a US federal withholding tax at a rate of 30%, or a lower rate under an applicable income tax treaty, from the gross amount of dividends paid to a non-US holder.

Dividends that are effectively connected with a non-US holder's conduct of a trade or business in the US or, if an income tax treaty applies, attributable to a permanent establishment in the US (effectively connected income or ECI), are taxed on a net income basis at the regular graduated rates and in the manner applicable to US persons. In that case, we will not have to withhold US federal withholding tax if the non-US holder complies with applicable certification and disclosure requirements. In addition to the US tax on ECI, in the

case of a holder that is a foreign corporation and has ECI, a branch profits tax may be imposed at a 30% rate, or a lower rate under an applicable income tax treaty, on the dividend equivalent amount.

In order to claim the benefit of an income tax treaty or claim exemption from withholding because the income is effectively connected with the conduct of a trade or business in the US, the non-US holder must provide a properly executed Form W-8BEN, for treaty benefits, or W-8ECI, for effectively connected income, prior to the payment of dividends. These forms must be periodically updated. Non-US holders should consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty and their ability to claim exemption from withholding because the income is effectively connected with the conduct of a trade or business in the US, and related certification requirements.

A non-US holder that is eligible for a reduced rate of US federal withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the US Internal Revenue Service (IRS) in a timely manner.

Gain on Disposition of Common Stock

A non-US holder generally will not be taxed on gain recognized on a disposition of our common stock unless:

- the gain is effectively connected with a non-US holder's conduct of a trade or business in the US or, alternatively, if an income tax treaty applies, is attributable to a permanent establishment maintained by the non-US holder in the US; in these cases, the gain will be taxed on a net income basis at the regular graduated rates and in the manner applicable to US persons, unless an applicable treaty provides otherwise, and, if the non-US holder is a foreign corporation, the branch profits tax described above may also apply;
- the non-US holder is an individual who holds our common stock as a capital asset, is present in the US for 183 days or more in the taxable year of the disposition and meets other requirements; in this case, the non-US holder will be subject to a 30% tax on the gain derived from the disposition; or
- we are or have been a US real property holding corporation (USRPHC) for US federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that the non-US holder held our common stock; in this case, the non-US holder may be subject to US federal income tax on its net gain derived from the disposition of our common stock at regular graduated rates. Generally, a corporation is a USRPHC if the fair market value of its US real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. If we are, or were to become, a USRPHC, gain realized upon disposition of our common stock by a non-US holder that did not directly or indirectly own more than 5% of our common stock during the shorter of the five-year period ending on the date of disposition or the period that the non-US holder held our common stock generally would not be subject to US federal income tax, provided that our common stock is "regularly traded on an established securities market" within the meaning of Section 897(c)(3) of the Code. We believe that we are not currently, and we do not anticipate becoming in the future, a USRPHC.

Federal Estate Tax

Common stock owned or treated as owned by an individual who is a non-US holder at the time of death, unless an applicable estate tax or other treaty provides otherwise, will be included in the individual's gross estate for US federal estate tax purposes, and therefore may be subject to US federal estate tax.

Information Reporting and Backup Withholding Tax

We must report annually to the IRS and to each non-US holder the amount of dividends paid to that holder and the tax withheld from those dividends. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable income tax treaty. Copies of the information returns

reporting those dividends and withholding may also be made available to the tax authorities in the country in which the non-US holder is a resident under the provisions of an applicable income tax treaty or agreement.

Under some circumstances, US Treasury regulations require additional information reporting and backup withholding (currently at a rate of 28%) on some payments on our common stock. The gross amount of dividends paid to a non-US holder that fails to certify its non-US holder status in accordance with applicable US Treasury regulations generally will be reduced by backup withholding at the applicable rate.

The payment of the proceeds of the disposition of our common stock by a non-US holder to or through the US office of any broker generally will be reported to the IRS and reduced by backup withholding unless the non-US holder either certifies its status as a non-US holder under penalties of perjury or otherwise establishes an exemption. The payment of the proceeds of the disposition of our common stock by a non-US holder to or through a non-US office of a non-US broker generally will not be reduced by backup withholding or reported to the IRS unless the non-US broker has certain enumerated connections with the US. In general, the payment of proceeds from the disposition of our common stock by or through a non-US office of a broker that is a US person or that has certain enumerated connections with the US will be reported to the IRS and may, in limited circumstances, be reduced by backup withholding, unless the broker receives a statement from the non-US holder, signed under penalty of perjury, certifying its non-US status or the broker has documentary evidence in its files that the holder is a non-US holder.

Non-US holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-US holder will be refunded, or credited against the holder’s US federal income tax liability, if any, provided that the required information or appropriate claim for refund is furnished to the IRS in a timely manner.

UNDERWRITING

Under the terms and subject to the conditions in an underwriting agreement dated l , 2005, we have agreed to sell to the underwriters named below, for whom Ladenburg Thalmann & Co. Inc. and Stanford Group Company are acting as the representatives, the following respective numbers of shares of common stock:

Underwriters	Number of Shares
	l
Total	l

Subject to the terms and conditions of the underwriting agreement, the underwriters have agreed to purchase from us l shares of our common stock at the public offering price, less the underwriting discounts and commissions set forth on the cover page of this prospectus. The underwriting agreement provides that the underwriters' obligations to purchase our shares are subject to approval of legal matters by counsel and to the satisfaction of other conditions. The underwriters are obligated to purchase all of the shares (other than those covered by the over-allotment option described below) if they purchase any shares. The underwriting agreement also provides that, if an underwriter defaults, the purchase commitments of non-defaulting underwriters may be increased or this offering may be terminated.

Commissions and Expenses

The underwriters propose to offer the shares to the public at the public offering price set forth on the cover of this prospectus. The underwriters may offer the shares to securities dealers at the price to the public less a concession not in excess of $ l per share. Securities dealers may reallow a concession not in excess of $ l per share to other dealers. After the shares are released for sale to the public, the underwriters may vary the offering price and other selling terms from time to time. The underwriters will also receive a nonaccountable expense allowance equal to 1% of the public offering price set forth on the cover of this prospectus for the sale of all the shares sold (excluding shares sold pursuant to the overallotment option, if any).

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming no exercise and full exercise of the underwriters' over-allotment option to purchase additional shares.

	No Exercise	Full Exercise
Per Share	$ l	$ l
Total	$ l	$ l

We estimate that the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately $ l .

Warrant

We have agreed to sell to the representatives, for nominal consideration, a warrant (Underwriters' Warrant) to purchase up to a total of l shares of our common stock. The Underwriters' Warrant is not exercisable during the first year after the date of this prospectus and thereafter is exercisable at an exercise price equal to 125% of the public offering price per share set forth on the cover of this prospectus for a period commencing on the first anniversary of the date of this prospectus and ending on the fifth anniversary of the date of this prospectus. The Underwriters' Warrant contains customary antidilution provisions and certain demand and participatory registration rights. The Underwriters' Warrant also includes a "cashless" exercise provision entitling the holder to convert the Underwriters' Warrant into shares of our common stock. The Underwriters' Warrant may not be sold, transferred, assigned or hypothecated for a period of one year from the date of this prospectus, except to officers or partners of the underwriters and members of the selling group and/or their officers or partners.

Over-Allotment Option

We have granted to the underwriters an option, exercisable not later than 45 days after the date of this prospectus, to purchase up to an aggregate of l additional shares of common stock at the public offering price set forth on the cover page of this prospectus less the underwriting discounts and commissions. The underwriters may exercise this option in whole or in part only to cover over-allotments, if any, made in connection with the sale of shares offered hereby.

Lock-Up and Related Agreements

Except as noted below, our directors, executive officers and principal stockholders will agree with the representatives that for a period of 270 days following the date of this prospectus, they will not offer, sell, assign, transfer, pledge, contract to sell or otherwise dispose of or hedge any of our shares of common stock or any securities convertible into or exchangeable for shares of common stock. Such shareholders may make gifts of our common stock within the restricted period provided the recipient agrees in advance to be bound by the lock-up restrictions. The representatives may, in their sole discretion, at any time without prior notice, release all or any portion of the shares from the restrictions in any such agreement. We have entered into an agreement with the representatives, stating that we will not issue additional shares (with the exception of shares issued pursuant to the over-allotment option) of our common stock prior to the end of the 270 day period following the date of this prospectus, other than with respect to our issuing shares pursuant to employee benefit plans, qualified option plans or other employee compensation plans already in existence, or pursuant to currently outstanding options, warrants or other rights to acquire shares of our common stock. There are no agreements between the representatives and any of our directors, executive officers or principal stockholder releasing them from these lock-up agreements, or with us pertaining to our issuance of additional shares, prior to the expiration of the 270 day period.

Indemnification

We have agreed to indemnify the underwriters against certain civil liabilities, including liabilities under the Securities Act and liabilities arising from breaches of representations and warranties contained in the underwriting agreement, and to contribute to payments the underwriters may be required to make in respect of any such liabilities.

Stabilization, Short Positions and Penalty Bids

The representatives may engage in over-allotment, stabilizing transactions, syndicate covering transactions, and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of the common stock, in accordance with Regulation M under the Securities Exchange Act of 1934:

- Over-allotment transactions involve sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters is not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any short position by either exercising their over-allotment option and/or purchasing shares in the open market.
- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specific maximum.
- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. If the underwriters sell more shares than could be

covered by the over-allotment option, a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.

- Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the NASDAQ National Market or otherwise and, if commenced, may be discontinued at any time. Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these stabilizing transactions or that any transaction, once commenced, will not be discontinued without notice.

Offering Price Determination

Prior to this offering, there has been no market for our common stock. The public offering price has been, due to our lack of operating history, arbitrarily determined by negotiations between us and the representatives, bears no relationship to our earnings, book value, net worth or other financial criteria of value and may not be indicative of the market price for the common stock after this offering. After completion of this offering, the market price of the common stock will be subject to change as a result of market conditions and other factors.

Discretionary Accounts

The representatives of the underwriters have advised us that they do not intend to confirm sales of the shares to discretionary accounts.

LEGAL MATTERS

The validity of the common stock being offered hereby is being passed upon for us by Dreier LLP. We have received certain advice from our legal counsel in connection with the matters described herein. Such legal advice is solely for our benefit and not for any stockholder or prospective investor. Purchasers of common stock offered hereby are not entitled to rely on any such advice and should not consider any such counsel to represent them or their interests. Certain legal matters relating to the offering will be passed upon for the underwriters by Greenberg Traurig, LLP, New York, New York. Prospective investors should consult with their own legal and other counsel.

EXPERTS

The financial statements of Electro-Optical Sciences, Inc. as of December 31, 2003 and 2004, and for each of the three years in the period ended December 31, 2004, as set forth in their report, have been included herein and in the Registration Statement in reliance upon the report of Eisner LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock we are offering to sell. This prospectus, which constitutes part of the registration statement, does not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information. Whenever we make reference in this prospectus to any of our contracts, agreements or other documents, the references are not necessarily complete and you should refer to the exhibits attached to the registration statement for copies of the actual contract, agreement or other document. When we complete this offering, we will also be required to file annual, quarterly and special reports, proxy statements and other information with the SEC. We anticipate making these documents publicly available, free of charge, on our website at www.eo-sciences.com as soon as reasonably practicable after filing such documents with the Securities and Exchange Commission.

You can read the registration statement and our future filings with the SEC, over the internet at the SEC's website at http://www.sec.gov. You may also read and copy any document that we file with the Securities and Exchange Commission at its public reference room at 450 Fifth Street, N.W., Washington, DC 20549.

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, NW, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room.

ELECTRO-OPTICAL SCIENCES, INC.

CONTENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Electro-Optical Sciences, Inc.

The following report is in the form that will be signed upon the effectiveness of the one-for-two reverse common stock split described in Note 1 to the financial statements.

/s/ Eisner LLP

New York, New York
June 3, 2005

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Electro-Optical Sciences, Inc.

We have audited the accompanying balance sheets of Electro-Optical Sciences, Inc. (the "Company") as of December 31, 2004 and 2003, and the related statements of operations, stockholders' (deficiency) equity and cash flows for each of the years in the three year period ended December 31, 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Electro-Optical Sciences, Inc. as of December 31, 2004 and 2003, and the results of its operations and its cash flows for each of the years in the three year period ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America.

Eisner LLP

New York, New York
May 31, 2005

ELECTRO-OPTICAL SCIENCES, INC.

BALANCE SHEETS

	December 31, 2003 (audited)	December 31, 2004 (audited)	March 31, 2005 (unaudited)	Pro-Forma March 31, 2005 (unaudited) (Note 1)
ASSETS				
Current Assets:				
Cash and cash equivalents	$ 116,691	$ 108,705	$ 190,818	$ 190,818
Marketable securities	—	6,594,751	5,108,796	5,108,796
Accounts receivable, net	16,679	7,128	7,075	7,075
Inventories	72,865	69,755	82,756	82,756
Prepaid expenses and other current assets	10,697	32,844	23,263	23,263
Total Current Assets	216,932	6,813,183	5,412,708	5,412,708
Property and equipment, net	18,418	89,306	130,671	130,671
Patents and trademarks, net	178,157	163,459	160,817	160,817
Other assets	18,248	30,201	30,201	30,201
Total Assets	$ 431,755	$ 7,096,149	$ 5,734,397	$ 5,734,397
LIABILITIES AND STOCKHOLDERS' (DEFICIENCY) EQUITY				
Current Liabilities:				
Accounts payable	$ 211,810	$ 338,821	$ 150,385	$ 150,385
Accrued expenses	363,270	228,583	324,984	324,984
Deferred revenues	—	106,335	—	
Notes payable — stockholders	48,000	—		
Notes payable — other	15,000	—		
Other current liabilities	11,976	17,284	17,898	17,898
Total Current Liabilities	650,056	691,023	493,267	493,267
REDEEMABLE CONVERTIBLE PREFERRED STOCK				
Redeemable Preferred Stock Series B Convertible 992,986 shares designated (liquidation preference $2.26 per share); issued and outstanding 992,986 shares at December 31, 2003 and 2004 and March 31, 2005 and 0 shares at March 31,2005, pro forma	2,244,147	2,244,147	2,244,147	—
Redeemable Preferred Stock Series C Convertible 5,744,340 shares designated (liquidation preference $2.26 per share); issued and outstanding 907,077 shares at December 31, 2003 and 5,414,779 shares at December 31, 2004 and March 31, 2005 and 0 shares at March 31, 2005, pro forma	1,822,950	6,340,666	6,761,796	—
COMMITMENTS AND CONTINGENCIES				
Stockholders' (Deficiency) Equity:				
Preferred stock — $.10 par value; authorized 16,936,704 shares:				
Series A Convertible Preferred Stock, 199,380 shares designated - (liquidation preference $5.00 per share); issued and outstanding 198,000 shares at December 31, 2003 and 2004 and March 31, 2005 and 0 shares at March 31, 2005, pro forma	972,311	972,311	972,311	—
Common stock — $.001 par value; authorized 30,000,000 shares; issued and outstanding 1,684,760 shares at December 31, 2003 and 1,809,758 shares at December 31, 2004 and March 31, 2005 and 6,513,164 shares at March 31, 2005, pro forma	1,685	1,810	1,810	6,513
Additional paid-in capital	5,119,923	10,981,455	10,631,125	20,604,676
Notes receivable	(69,000)	(69,000)	(69,000)	(69,000)
Deferred compensation	(22,500)	(159,300)	(151,335)	(151,335)
Accumulated deficit	(10,287,817)	(13,906,963)	(15,149,724)	(15,149,724)
Stockholders' (Deficiency) Equity	(4,285,398)	(2,179,687)	(3,764,813)	5,241,130
Total Liabilities and Stockholders' (Deficiency) Equity	$ 431,755	$ 7,096,149	$ 5,734,397	$ 5,734,397

See accompanying notes to the financial statements

ELECTRO-OPTICAL SCIENCES, INC.

STATEMENTS OF OPERATIONS

	Year Ended			Three Months Ended	
	December 31, 2002 (audited)	December 31, 2003 (audited)	December 31, 2004 (audited)	March 31, 2004 (unaudited)	March 31, 2005 (unaudited)
Revenue from Difoti® sales, net (Note 10)	$ 142,559	$ 375,490	$ 364,066	$ 91,549	$ 87,589
Revenue from grants	547,290	—	—	—	—
Total revenue	689,849	375,490	364,066	91,549	87,589
Cost of sales	649,620	83,044	166,468	20,159	8,255
Gross profit	40,229	292,446	197,598	71,390	79,334
Selling, general and administrative expenses	769,021	1,338,760	1,858,152	532,732	712,088
Research and development	404,331	828,239	1,891,551	307,690	636,267
Loss from operations	(1,133,123)	(1,874,553)	(3,552,105)	(769,032)	(1,269,021)
Interest income	(2,189)	(1,373)	(27,935)	(178)	(26,260)
Interest expense	10,117	76,923	94,976	1,170	—
	7,928	75,550	67,041	992	(26,260)
Net loss	(1,141,051)	(1,950,103)	(3,619,146)	(770,024)	(1,242,761)
Less:					
Preferred stock deemed dividends	214,245	321,830	676,218	110,704	362,039
Preferred stock accretion	180,009	25,228	322,800	6,934	421,130
Stock distribution of Preferred Series B shares		101,700			
Net Loss Attributable to Common Stockholders	$ (1,535,305)	$ (2,398,861)	$ (4,618,164)	$ (887,662)	$ (2,025,930)
Basic and diluted net loss per common share	$ (1.00)	$ (1.49)	$ (2.61)	$ (0.53)	$ (1.12)
Basic and diluted weighted average number of shares outstanding	1,534,760	1,614,897	1,766,608	1,684,760	1,809,758
Pro forma basic and diluted net loss per common share (unaudited)			(0.91)		(0.19)
Pro forma basic and diluted weighted average number of common shares outstanding (unaudited)			3,967,024		6,513,164

See accompanying notes to financial statements

ELECTRO-OPTICAL SCIENCES, INC.

STATEMENT OF STOCKHOLDERS' (DEFICIENCY) EQUITY
Years ended December 31, 2002, 2003 and 2004, and the three months ended March 31, 2005

	Convertible Preferred Stock Series A		Common Stock		Additional Paid-in Capital	Notes Receivable	Deferred Compensation	Accumulated Deficit	Total Stockholders' (Deficiency)
	Shares	Amount	Shares	Amount					
Balance at January 1, 2002	198,000	$ 972,311	1,534,760	$ 1,535	$ 2,932,174		$ (117,000)	$ (7,196,663)	$ (3,407,643)
Amortization of deferred compensation							72,000		72,000
Net loss								(1,141,051)	(1,141,051)
Preferred stock accretion					(180,009)				(180,009)
Balance at December 31, 2002	198,000	$ 972,311	1,534,760	$ 1,535	$ 2,752,165		$ (45,000)	$ (8,337,714)	$ (4,656,703
Preferred stock accretion					(25,228)				(25,228)
Amortization of deferred compensation							22,500		22,500
Issuance of common stock in exchange for notes receivable			150,000	150	68,850	(69,000)			—
Adjustment for reduction to liquidation value of Series B preferred stock					2,125,600				2,125,600
Stock distribution of preferred Series B shares					101,700				101,700
Common stock options issued for consulting fees					96,836				96,836
Net loss								(1,950,103)	(1,950,103)
Balance at December 31, 2003	198,000	$ 972,311	1,684,760	$ 1,685	$ 5,119,923	$ (69,000)	$ (22,500)	$ (10,287,817)	$ (4,285,398)
Sale of common stock			124,998	125	137,375				137,500
Deferred compensation-stock option awards to employees					159,300		(159,300)		—
Issuance of option to non-employee directors					150,450				150,450
Preferred stock accretion					(322,800)				(322,800)
Warrants issued in connection with preferred Series C stock					3,158,948				3,158,948
Beneficial conversion in connection with preferred Series C stock					2,385,063				2,385,063
Issuance of options to consultants					72,800				72,800
Issuance of warrants to consultant					120,396				120,396
Amortization of deferred compensation							22,500		22,500
Net loss								(3,619,146)	(3,619,146)
Balance at December 31, 2004	198,000	$ 972,311	1,809,758	$ 1,810	$ 10,981,455	$ (69,000)	$ (159,300)	$ (13,906,963)	$ (2,179,687)
Preferred stock accretion					(421,130)				(421,130)
Issuance of options for employee compensation					70,800				70,800
Amortization of deferred compensation							7,965		7,965
Net loss								(1,242,761)	(1,242,761)
Balance at March 31, 2005 (unaudited)	198,000	$ 972,311	1,809,758	$ 1,810	$ 10,631,125	$ (69,000)	$ (151,335)	$ (15,149,724)	$ (3,764,813)

See accompanying notes to the financial statements

ELECTRO-OPTICAL SCIENCES, INC.

STATEMENTS OF CASH FLOWS

	Year Ended			Three Months Ended	
	December 31, 2002 (audited)	December 31, 2003 (audited)	December 31, 2004 (audited)	March 31, 2004 (unaudited)	March 31, 2005 (unaudited)
Cash flows from operating activities:					
Net loss	$ (1,141,051)	$ (1,950,103)	$ (3,619,146)	$ (770,024)	$ (1,242,761)
Adjustments to reconcile net loss to net cash used in operating activities:					
Allowance for doubtful accounts	—	(13,288)	(9,000)		—
Depreciation and amortization	33,329	30,987	35,860	7,286	13,212
Noncash compensation and amortization of deferred compensation	72,000	22,500	172,950	—	78,765
Common stock options and warrant issued for consulting fees	—	96,836	193,196	—	—
Amortization of discount on marketable securities	—	—	(10,001)	—	(30,072)
Accrued interest receivable	—	(1,056)	(15,293)		(6,189)
Accrued interest payable	—	8,985	—	1,170	—
Interest expense attributable to preferred Series C		45,000			
Interest expense from bridge loan			80,000		
Changes in operating assets and liabilities:					
(Increase) decrease in accounts receivable	(3,326)	53,585	20,662	(31,249)	53
Decrease (increase) in inventories	67,279	(39,296)	3,110	(31,287)	(13,001)
Decrease (increase) in prepaid expenses and other current assets	6,060	(2,408)	(20,918)	2,399	15,770
Increase (decrease) in accounts payable and accrued expenses	237,660	128,429	(7,676)	(38,336)	(92,035)
(Decrease) increase in deferred revenues	—	(57,300)	106,335	10,000	(106,335)
Increase (decrease) in other current liabilities	44,373	(21,879)	5,308	(11,976)	614
Net cash used in operating activities	(683,676)	(1,699,008)	(3,064,613)	(862,017)	(1,381,979)
Cash flows from investing activities:					
Patent costs	—	(5,986)	(3,166)	(2,165)	(1,831)
Purchases of property and equipment	—	(2,432)	(88,884)	(5,244)	(50,104)
Redemption (purchase) of marketable securities	518,050	—	(6,584,750)	—	1,516,027
Net cash provided by (used in) investing activities	518,050	(8,418)	(6,676,800)	(7,409)	1,464,092
Cash flows from financing activities:					
Proceeds from issuance of Series C preferred stock	—	1,500,000	9,171,480	1,100,000	—
Expenses related to Series C preferred stock offering	—	(252,278)	(447,553)	—	—
Proceeds from (repayment of) notes payable to stockholders	—	48,000	(48,000)	—	—
Proceeds from issuance of notes payable	—	520,000	920,000	—	—
Proceeds from sale of common stock	—	—	137,500	—	—
Net cash provided by financing activities	-	1,815,722	9,733,427	1,100,000	—
Net (decrease) increase in cash and cash equivalents	(165,626)	108,296	(7,986)	230,574	82,113
Cash and cash equivalents at beginning of period	174,021	8,395	116,691	116,691	108,705
Cash and cash equivalents at end of period	$ 8,395	$ 116,691	$ 108,705	$ 347,265	$ 190,818
Supplemental Cash Flow Information:					
Cash paid for interest	$ —	$ 24,378	$ 14,976	$ —	$ —
Supplemental Schedule of Noncash Financing Activities:					
Notes payable exchanged for Series C preferred stock	$ —	$ 505,000	$ 1,015,000	$ —	$ —
Notes receivable in exchange for common stock	$ —	$ 69,000	$ —	$ —	$ —
Preferred stock accretion	$ 180,009	$ 25,228	$ 322,800	$ 6,934	$ 421,130
Reduction to liquidation value Series B		$ 2,125,600			
Beneficial conversion issued in connection with Series C			$ 2,385,063		
Fair value of warrants issued in connection with Series C preferred stock			$ 3,158,948		

See accompanying notes to financial statements

ELECTRO-OPTICAL SCIENCES, INC.

NOTES TO FINANCIAL STATEMENTS
(In thousands, except for share and per share date)
(Information for the three months ended March 31, 2005 and 2004 is unaudited)

1. PRINCIPAL BUSINESS ACTIVITIES AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Organization and Business

Electro-Optical Sciences, Inc., a Delaware corporation (the "Company") is focused on the design and development of a non-invasive, point-of-care instrument for assisting in the early diagnosis of melanoma. The Company has entered into a Protocol Agreement with the Food and Drug Administration (FDA) which is an agreement for the conduct of the pivotal trial and to establish the safety and effectiveness of the MelaFind® device. Upon obtaining premarket approval, or PMA, from the FDA, the Company plans to launch MelaFind® in the United States.

The Company discontinued all operations associated with its DIFOTI® product effective as of April 5, 2005, in order to focus its resources on the development and commercialization of MelaFind®. The Company is currently seeking a buyer for the DIFOTI® assets, and does not expect to have any significant continuing responsibility for the DIFOTI® business after the sale of the DIFOTI® assets.

Pro Forma Balance Sheet

The accompanying balance sheet as of March 31, 2005, and the statements of operations, stockholders' equity (deficiency) and cash flows for the three months ended March 31, 2005 and 2004 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments necessary to present fairly the Company's financial position and results of operations and cash flows for the three months ended March 31, 2005 and 2004. The financial data and other information disclosed in these notes to financial statements related to the three month periods are unaudited. The results for the three months ended March 31, 2005 are not necessarily indicative of the results to be expected for the year ending December 31, 2005.

The Pro Forma Balance Sheet gives effect as of March 31, 2005 to the conversion of all of the Company's outstanding preferred stock into 3,398,105 shares of common stock which will occur upon the closing of the proposed initial public offering. Upon such conversion, the deemed dividends on the convertible preferred stock will be forfeited. Additionally, it is assumed for pro forma purposes that 2,610,643 of the Company's warrants to purchase the Company's common stock will be exchanged for a total of 1,305,321 shares of the Company's common stock based on an exchange ratio of one share of the Company's common stock for every two shares of the Company's common stock purchaseable under the warrants and will occur prior to the closing of the proposed initial public offering.

Reverse Stock Split

The Board of Directors approved on May 13, 2005, a one-for-two reverse common stock split, which will become effective upon the earlier of the conversion of the preferred stock or September 30, 2005. All references to common stock, common shares outstanding, average number of common shares outstanding, per share amounts, common stock options and warrants in these financial statements and notes to financial statements have been restated to reflect the one-for- two common stock reverse split on a retroactive basis.

Cash and Cash Equivalents

The Company maintains cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses on these accounts. Cash equivalents include all highly-liquid debt instruments with an original maturity of three months or less at the date of acquisition.

Accounts Receivable

Accounts receivable are reported at their outstanding unpaid principal balances reduced by an allowance for doubtful accounts. The Company estimates doubtful accounts based on historical bad debts, factors related to specific customers' ability to pay and current economic trends. The Company writes off accounts receivable against the allowance when a balance is determined to be uncollectible.

Inventories

Inventories, which consist primarily of DIFOTI® supplies, are stated at the lower of cost, determined by the first-in, first-out method, or market.

Property and Equipment

Depreciation of property and equipment is provided for by the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are amortized over the lesser of the assets' useful lives or the remaining term of the lease.

Patents

Patents are carried at cost less accumulated amortization which is calculated on a straight-line basis over a period of 15 years.

Revenue Recognition

Revenue from DIFOTI® product sales is recognized at the time of delivery and acceptance, and after consideration of all the terms and conditions of the customer contract. Certain of the Company's products which were being sold prior to December 31, 2004 included a 30-day return policy. Revenue on these products is recognized after the shipment is made and the 30-day return period has elapsed. Effective January 1, 2005 all products are sold without a right of return and revenue is therefore recognized after the shipment is made. Deferred revenues at December 31, 2004 consist of revenues that were billed and paid in advance of the shipment of the product. During April 2005, the Company discontinued the sale of the DIFOTI® product line.

The Company has not received FDA approval for the sale of MelaFind® or any other product line, and has had no revenues from products other than DIFOTI®.

Grant revenue generated in 2002 represents federal grants received by the Company in conjunction with an undertaking to perform certain research. Cost of sales for the year ended December 31, 2002 includes expenses attributable to the grant revenue, principally payroll and related costs amounting to $564.

Warranty Costs

The Company generally warrants its products for one year after sale. Warranty costs have been de minimus to the Company and are recorded when incurred.

Shipping Costs

Shipping costs are included in selling, general and administrative expenses and amounted to approximately $18, $24 and $28 for the years ended December 31, 2002, 2003 and 2004, respectively, and $7 and $9 for the three months ended March 31, 2004 and 2005, respectively.

Income Taxes

Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the amounts of existing assets and liabilities carried on the financial statements and their respective tax bases and the benefits arising from the realization of operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized.

Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires the use of estimates and assumptions by management that affect reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Long-lived Assets

The Company reviews long-lived assets for impairment annually whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An asset is considered to be impaired when the sum of the undiscounted future net cash flows expected to result from the use of the asset and its eventual disposition exceeds its carrying amount. The amount of impairment loss, if any, is measured as the difference between the net book value of the asset and its estimated fair value.

Advertising Costs

Costs incurred for producing and communicating advertising are expensed as incurred and are included in selling, general and administrative expenses in the accompanying statements of operations. Advertising expenses were approximately $0, $3 and $57 for the years ended December 31, 2002, 2003 and 2004, respectively, and $0 and $15 for the three months ended March 31, 2004 and 2005, respectively.

Research and Development

Research and development costs are expensed as incurred.

Stock-Based Compensation

The Company applies the intrinsic-value method of accounting prescribed by the Accounting Principles Board (APB) Opinion No. 25 and related interpretations to account for the Company’s fixed-plan employee stock options. Under this method, compensation expense is recorded on the date of grant only if the then current market price of the underlying stock exceeded the exercise price. Statement of Financial Accounting Standards (SFAS) No. 123, Accounting for Stock-Based Compensation, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure*, established accounting and disclosure requirements using a fair-value based method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123 and No. 148, the Company has elected to continue to apply the intrinsic-value based method of accounting for employee stock options described above, and has adopted only the disclosure requirements of SFAS No. 123. Had the Company elected to recognize compensation cost based on the fair

value of the options granted at the grant date, as prescribed by SFAS No. 123, the Company's net loss and net loss per share would have been adjusted to the pro forma amounts indicated below:

	December 31,			March 31,	
	2002	2003	2004	2004	2005
Net loss attributable to common stockholders, as reported	$ (1,535)	$ (2,399)	$ (4,618)	$ (888)	$ (2,026)
Add: stock-based employee compensation included in reported net loss, net of income tax effect	72	23	173	6	79
Deduct: stock-based employee compensation expense determined under fair-value-based method, net of related tax effect	(75)	(65)	(186)	(8)	(82)
Pro Forma Net Loss	$ (1,538)	$ (2,441)	$ (4,631)	$ (890)	$ (2,029)
Basic and Diluted Loss per Share, as reported	$ (1.00)	$ (1.49)	$ (2.61)	$ (0.53)	$ (1.12)
Basic and Diluted Loss per Share, pro forma	$ (1.00)	$ (1.51)	$ (2.62)	$ (0.53)	$ (1.12)

The per share weighted-average fair value of stock options granted during 2002, 2003 and 2004 was $.26, $.34, and $3.00, respectively, on the dates of grant using the Black-Scholes option-pricing model.

During the three months ended March 31, 2005, the Company did not grant any stock options. The per share weighted average fair value of stock options granted during the three months ended March 31, 2004 was determined using the Black-Scholes option pricing model resulting in a weighted average fair value of $0.23 per share. The following weighted-average assumptions were used:

	December 31,			March 31,	
	2002	2003	2004	2004	2005
Expected volatility	1%	1%	60%	60%	—
Risk-free interest rate	4.52%	4.52%	3.17%	3.39%	
	to	to	to		
	5.43%	5.43%	3.94%		
Expected option life (in years)	10	10	5	5	
Expected dividend yield	0%	0%	0%	0%	

Options or warrants issued to non-employees for services are recorded at fair value and accounted for in accordance with Emerging Issues Task Force (EITF) Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.* For equity instruments that are not immediately vested, compensation cost is measured on the date such instruments vest or a performance commitment, as defined in EITF Issue 96-18, is reached. The costs are classified in the accompanying statements of operations based on the nature of the services performed.

Deferred Compensation

Deferred compensation attributable to unvested common stock options is measured at the measurement date for the respective grants, and reflected as a deduction from stockholders' equity. Compensation expense is recognized ratably over the vesting period.

Financial Instruments

The Company's financial instruments consist principally of cash and cash equivalents, marketable securities, accounts receivable and accounts payable. The Company believes the financial instruments' recorded values approximate current values because of their nature and respective durations. The Company maintains cash in bank deposit accounts, which, at times, may exceed federally insured limits. The Company has not experienced any losses on these accounts.

Net Loss per Common Share

Net loss per share is presented in accordance with the provisions of SFAS No. 128, "Earnings Per Share" ("EPS"). Basic EPS excludes dilution for potentially dilutive securities and is computed by dividing net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted EPS gives effect to dilutive options, warrants and other potential common shares outstanding during the period. Diluted net loss per common share is equal to basic net loss per common share since all potentially dilutive securities are anti-dilutive for each of the periods presented. Diluted net loss per common share for the years ended December 31, 2002, 2003 and 2004 does not include the effects of options to purchase 142,581, 290,678 and 965,203 shares of common stock, respectively, and 412,182 and 954,266 shares for the three months ended March 31, 2004 and 2005 respectively; 690, 369,993 and 2,758,923 common stock warrants for the years ended December 31, 2002, 2003 and 2004, respectively, and 613,356 and 2,758,923 common stock warrants for the three months ended March 31, 2004 and 2005, respectively.

The pro forma basic and diluted net loss per common share for the year ended December 31, 2004 and for the three months ended March 31, 2005 gives effect to the conversion of the existing shares of preferred stock into 3,398,105 shares of common stock at the conversion ratios which would apply upon consummation of the proposed initial public offering and the exchange of 2,610,643 warrants for 1,305,321 shares of common stock as described in Note 9. In addition, the net loss attributable to the Company's common stockholders used in the computation of basic and diluted net loss per share for the unaudited pro forma net loss attributable to the Company's common stockholders has been adjusted to reverse the accretion on the Company's preferred stock and also excludes the preferred stock dividends for the respective periods.

Recently Issued Pronouncements

In December 2004, the Financial Accounting Standards Board (FASB) issued the revised SFAS No. 123, Share-Based Payment ("SFAS 123R"), which addresses the accounting for share-based payment transactions in which the Company obtains employee services in exchange for (a) equity instruments of the Company or (b) liabilities that are based on the fair value of the Company's equity instruments or that may be settled by the issuance of such equity instruments. SFAS 123R eliminates the ability to account for employee share-based payment transactions using APB No. 25 and requires instead that such transactions be accounted for using the grant-date fair value based method. SFAS 123R will be effective as of the beginning of the first interim or annual reporting period that begins after December 15, 2005 (January 1, 2006 for the Company) and applies to all awards granted or modified after the effective date. In addition, compensation cost for the unvested portion of previously granted awards that remain outstanding on the effective date shall be recognized on or after the effective date, as the related services are rendered, based on the awards' grant-date fair value as previously calculated for the pro-forma disclosure under SFAS 123. The Company expects that upon the adoption of SFAS 123R it will apply the modified prospective application transition method, as permitted by the statement. Under such transition method, upon the adoption of SFAS 123R, the Company's financial statements for periods prior to the effective date of the statement will not be restated. The impact of this statement on the Company's financial statements or its results of operations in 2005 and beyond will depend upon various factors, among them, its future compensation strategy. The Company

expects that the effect of applying this statement on its results of operations in 2005 as it relates to existing option plans would not be materially different from the SFAS 123 pro forma effect previously reported.

In March 2004, the FASB issued EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments," which provides new guidance for assessing impairment losses on debt and equity investments. Additionally, EITF Issue No. 03-1 includes new disclosure requirements for investments that are deemed to be temporarily impaired. In September 2004, the FASB delayed the accounting provisions of EITF Issue No. 03-1; however, the disclosure requirements remain effective and have been adopted by the Company in the financial statements. The Company will evaluate the effect, if any, of EITF Issue No. 03-1 when final guidance is released.

2. MARKETABLE SECURITIES:

Marketable securities consist of debt securities that the Company has the intent and ability to hold to maturity. The Company classifies the marketable securities as held-to maturity in accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities". Held-to-maturity securities are recorded at amortized cost. The Company's investments mature within one year. Investments in securities are summarized as follows at December 31, 2004 and March 31, 2005:

	December 31, 2004			March 31, 2005		
	Gross Unrealized Loss	Fair Value	Amortized Cost	Gross Unrealized Loss	Fair Value	Amortized Cost
Corporate commercial paper	$ (—)	$ 2,500	$ 2,500	$ (—)	$ 1,000	$ 1,000
Corporate debt	(10)	2,497	2,507	(8)	2,511	2,519
United States Treasury note	(8)	1,580	1,588	(10)	1,580	1,590
	$ (18)	$ 6,577	$ 6,595	$ (18)	$ 5,091	$ 5,109

3. PROPERTY AND EQUIPMENT:

Property and equipment, at cost, consists of the following:

	December 31,		March 31,	Estimated
	2003	2004	2005	Useful Life
Leasehold improvements	$ 23	$ 32	$ 35	5-10 years
Laboratory and research equipment	61	119	119	5 years
Office furniture and equipment	112	134	158	5 years
	197	286	312	
Less accumulated depreciation and amortization	179	197	182	
	$ 18	89	$ 130	

Depreciation expense amounted to approximately $16, $15 and $18, for the years ended December 31, 2002, 2003 and 2004, respectively and $3 and $9 for the three months ended March 31, 2004 and 2005 respectively.

4. PATENTS:

Patents are shown in the accompanying balance sheets net of accumulated amortization of $83 and $101 at December 31, 2003 and 2004, respectively, and $105 at March 31, 2005. Amortization expense related to

the patents was approximately $17, $17 and $18 for the years ended December 31, 2002, 2003 and 2004, respectively, and $4 and $4 for the three months ended March 31, 2004 and 2005, respectively.

The estimated future amortization expense related to the patents is as follows:

Year ended December 31,	
2005	$ 18
2006	18
2007	18
2008	18
2009	18
Thereafter	73
	$ 163

5. NOTES PAYABLE-STOCKHOLDERS:

During 2003, the Company had notes payable to two of its stockholders totaling $48. These notes were payable in October 2004, bore interest at 6%, and were repaid during 2004. Interest expense amounted to approximately $1 and $2 for the years ended December 31, 2003 and 2004, respectively.

In addition, the Company had a demand note payable to one of its stockholders in the amount of $15 with interest accruing at 12% per annum. During October 2004, the note and accrued interest of $1 were converted into 6,999 shares of Series C preferred stock.

6. COMMITMENTS AND CONTINGENCIES:

The Company is obligated under two non cancelable operating leases for office space expiring June 2005 and November 2010. The leases are subject to escalations for increases in operating expenses. The approximate aggregate minimum future payments under these leases are due as follows:

Year ended December 31,	
2005	$ 155
2006	102
2007	108
2008	109
2009	115
Thereafter	105
	$ 694

Rent expense charged to operations amounted to approximately $88, $113 and $110 for the years ended December 31, 2002, 2003 and 2004, respectively, and $27 and $25 for the three months ended March 31, 2004 and 2005, respectively.

During January 2004, the Company entered into an employment agreement with its President and CEO through December 31, 2005, which provides for a base salary of $175, stock options and performance bonuses. The agreement provides for automatic one year renewal terms.

During January 2004 the Company amended its employment agreement with its former president, who now holds the title of Chief Science and Technology Officer. The agreement was originally entered into in May 2003 with a three-year term. The agreement now includes a salary of $175 and provides for stock

options and performance bonuses. As of May 31, 2005 this former employee is now a consultant to the Company.

The Company had been involved in various claims and legal actions arising in the ordinary course of business. The ultimate outcome of these matters did not have a material adverse impact on the financial position of the Company or the results of its operations.

7. EMPLOYEE BENEFIT PLAN:

The Company has a defined contribution plan under Section 401(k) of the Internal Revenue Code covering all qualified employees. An officer of the Company serves as trustee of the plan. The Company provides a matching contribution of up to 3% of each employee's salary. Contributions to this plan amounted to approximately $29, $12 and $25 for the years ended December 31, 2002, 2003 and 2004, respectively, and $5 and $10 for the three months ended March 31, 2004 and 2005, respectively.

8 STOCKHOLDERS' (DEFICIENCY) EQUITY AND REDEEMABLE PREFERRED STOCK:

During January 2003, the Company received $180 in exchange for issuing a convertible promissory note bearing interest at 10% per annum, The note was convertible at a discount of 20% on the next round of financing. In June 2003, the note was converted into Series C preferred stock. (See discussion below.) Upon conversion of the note the Company recorded a charge of $45 to reflect the value of the beneficial conversion of the shares since the shares were converted at $1.81 per share, a 20% discount. In addition, the Company granted the note holder five-year warrants to purchase 25% of the total number of securities issued upon conversion of the note, which amounted to 99,558 shares (or 24,890 warrants), at an exercise price equal to the per share price of the next financing as defined in the loan agreement. The value of these warrants was de minimus for the year ended December 31, 2003, interest on these notes amounted to approximately $8.

During February 2003, certain stockholders loaned the Company $325 bearing interest at 12% per annum. In June 2003, these loans were converted into 143,802 shares of Series C preferred stock at $2.26 per share. For the year ended December 31, 2003, interest on these notes amounted to approximately $21.

During June 2003, the Company completed a private placement whereby investors agreed to acquire up to 1,400,000 Preferred Series C units. Each unit consists of one share of Series C preferred stock and one warrant to purchase one half share of common stock at an exercise price of $6.50 per share. Of the 1,400,000 units, the first tranche of 663,717 units was sold for an aggregate of $1,500. Costs associated with this issuance amounted to $252. This amount will be accreted to the Series C over the redemption period. For the year ended December 31, 2003, $25 was accreted. The value of the warrants was de minimus.

In order to complete the private placement, the Series A and B stockholders consented to modifications to certain of their rights, preferences, and privileges. The Series A preferred shares were split 1,000 for 1 and due to the anti-dilution provision, the conversion ratio of Series A was changed to 0.5818 to 1 (totaling 16,202 shares of common stock). Additionally, the Company granted a stock distribution of 45,000 shares to the Series B stockholders, valued at $102 or $2.26 per share. As a result of these modifications, the Company adjusted the carrying amount of the Series B preferred stock. Due to the anti-dilution provision, the conversion ratio of Series B was changed to 0.5796 to 1(totaling 79,043 shares of common stock). The Series C preferred stock converts to common stock at a ratio of 0.50 to 1.

In connection with the private placement, 150,000 shares of common stock were sold to the promoters at $.46 per share. A note of $69 was exchanged for this purchase and is shown as a reduction in stockholders' equity (deficiency). The note bears interest at 3.06% and is due June 20, 2008. Interest income amounted to approximately $2 and $1 for the years ended December 31, 2004 and 2003, respectively.

During 2004, the second tranche of the Series C private placement was completed and an additional 486,725 of Series C units were issued for total proceeds of $1,100. An additional 427 units were distributed in order to comply with minimum ownership provisions. The value of the distribution was de minimus. In order to induce the investment in this second tranche, the Company issued additional warrants to purchase 121,681 shares of Series C preferred stock at a price of $2.26 per share, for waiving a development milestone. These warrants were valued at $179.

During May 2004, the Company obtained bridge loans in the amount of $1,000 from related parties. The loans bears interest at 1.57% and were payable on December 31, 2004. During October 2004 these loans were converted into 442,469 Preferred Series C units at a price of $2.26 per unit. The warrants were valued at $327. The Company also sold approximately 125,000 shares of common stock to the lenders at $.46 per share for $57. The Company ascribed a value to the common stock and recorded an imputed interest charge of $80.

During October 2004, the Company completed a second private placement and sold 3,578,081 Preferred Series C units for total proceeds of approximately $8,100 at a price of $2.26 per unit. The warrants were valued at $2,653. Costs of the Series C private placement amounted to approximately $448. This amount will be accreted to the Series C over the redemption period. For the year ended December 31, 2004, $71 was accreted.

As a result of the October 2004 Preferred Series C transactions, the Company recorded a beneficial conversion feature of $2,385.

The total accretion to redemption value for the Series C amounted to $25, $323, and $421 for the years ended December 31, 2003, 2004 and the three months ended March 31, 2005, respectively.

The rights, preferences, and privileges of the Series B and C redeemable preferred stock are as follows:

Voting Rights

All holders of redeemable convertible preferred stock have voting rights equal to the number of shares of common stock into which the respective preferred stock is convertible.

Liquidation Preference

In the event of liquidation, dissolution, or winding-up of the Company, and before any distribution to common stockholders, the holders of Series B and C redeemable convertible preferred stock are entitled to receive $2.26 per share plus all accrued but unpaid dividends.

Deemed Dividends

Dividends on the Series B and Series C preferred stock may be declared at the discretion of the board of directors at an annual rate equal to 10%, as adjusted, of the accreted value per share and shall be payable in preference and priority to any declaration or payment of any distribution on Series A preferred stock or common stock and will be cumulative. At December 31, 2004 and March 31, 2005 there are approximately $1,506 and $1,674 of deemed but unpaid dividends. In the event the preferred stock is converted into common stock, any related deemed dividends would be forfeited.

Redemption Provisions

Pursuant to the modification of the Series B preferred stock terms adopted at the closing of the Series C private placement, the requirement to redeem the preferred shares, at the option of the holder, has been extended to June 2008. The redemption of Series B requires approval of the Series C shareholders. The preferred Series C stock is redeemable at the option of the holder, on the fifth and sixth anniversary of the first

issuance of Series C preferred stock (June 2003). Both the Series B and C have been classified as mezzanine capital at their redemption values.

9. STOCK OPTIONS AND WARRANTS:

Warrants

Warrants outstanding consist principally of warrants issued in connection with the Company's Series C financing and generally expire seven years from the date of grant.

During 2003 and 2004, in connection with the sale of preferred Series C stock, 2,683,923 warrants at exercise prices ranging from $4.52 to $13.00 per share were issued and have been valued at $3,159.

During 2004, the Company issued a 5 year warrant to purchase 75,000 shares of common stock at an exercise price of $7.00 per share to one of its consultants. These warrants have been valued at $120.

Warrant activity during the periods indicated is as follows:

	Warrants	Weighted-Average Exercise Price
Outstanding at January 1, 2002	10,505	$ 10.00
Expired	(9,815)	10.00
Outstanding at December 31, 2002	690	$ 10.00
Granted	369,303	12.72
Outstanding at December 31, 2003	369,993	12.70
Granted	2,389,620	12.60
Expired	(690)	10.00
Outstanding at December 31, 2004	2,758,923	$ 12.61

There was no warrant activity during the quarter ended March 31, 2005.

On April 5, 2005, the Board of Directors approved, subject to stockholder approval, the issuance of 1,305,321 shares of the Company's common stock in exchange for 2,610,643 outstanding warrants (a conversion ratio of one share of common stock for two warrants.) The Company considers this transaction to be an exchange of equity instruments at fair value which will have no net effect on stockholders' equity.

The value of the warrants was determined using the Black-Scholes option pricing model.

Stock Options

The Company has two stock option plans (the "Plans") which allow the board of directors to grant incentives to employees, directors and collaborating scientists in the form of incentive stock options, nonqualified stock options and restricted stock. At December 31, 2004 and March 31, 2005, options to purchase 965,203 and 954,266 shares of common stock respectively at exercise prices ranging from $.40 to $10.00 per share are outstanding and are exercisable at various dates through 2013. The total number of shares reserved under the Company's stock option plans is 1,000,000.

In January 2003, the Company issued an option to acquire 24,209 shares of common at an exercise price of $1.00 valued at approximately $97 to outside consultants. During 2004, the Company issued options to acquire 22,750 shares of common stock at an exercise price of $.46 to outside consultants. These options had a nominal value.

During 2004 the Company issued 262,500 options to certain employees and Board members. The value of the options resulted in a charge to operations in the amount of $150 and $71 during the year ended December 31, 2004 and for the three months ended March 31, 2005, respectively. In addition, during 2003 and 2004 the Company issued options to consultants that resulted in a charge to operations of $97 and $73 during the years ended December 31, 2003 and 2004, respectively.

Stock option activity during the periods indicated is as follows:

	Number of Shares	Weighted-average Exercise Price
Outstanding at January 1, 2002	128,050	$ 2.28
Granted	14,531	1.00
Outstanding at December 31, 2002	142,581	2.16
Granted	158,565	.94
Expired/ Forfeited	(10,468)	.96
Outstanding at December 31, 2003	290,678	1.12
Granted	679,525	.46
Expired/ Forfeited	(5,000)	1.00
Outstanding at December 31, 2004	965,203	.66
Expired/ Forfeited	(10,937)	3.49
Outstanding at March 31, 2005	954,266	$ .63
Options exercisable at December 31, 2004	428,729	$ .89
Options exercisable at March 31, 2005	446,675	.82

The following table summarizes information about fixed stock options outstanding at December 31, 2004:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted-average Remaining Contractual Life	Weighted-average Exercise Price	Number Exercisable	Weighted-average Exercise Price
$.01-$.46	694,525	4.7 years	$ .46	173,989	$ .46
$.47-$1.00	265,678	6.5 years	1.00	249,740	1.00
$1.01-$10.00	5,000	.4 years	10.00	5,000	10.00
$.01-$10.00	965,203	5.7 years	$ .66	428,729	$ .89

In May 2005, the Company amended option agreements for 125,000 shares in the aggregate, of three key employees to immediately vest upon the completion of a successful initial public offering. The Company will record a charge to operations based upon the initial public offering price.

10. INCOME TAXES:

At December 31, 2004, the Company had net operating loss carryforwards of approximately $12,208 available to offset future taxable income expiring at various dates through the year 2024. The Company's ability to utilize its net operating losses may be significantly limited due to changes in the Company's ownership as defined by federal income tax regulations. Without regard to any such limitations, the Company had a deferred tax asset of approximately $3,443 and $4,883 at December 31, 2003 and 2004, respectively. Because the Company anticipates continued losses for the foreseeable future, the Company has recorded a

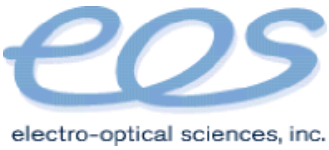
100% valuation allowance against its deferred income tax assets for all years. The increase in the valuation allowance for the years ended December 31, 2002, 2003, and 2004 amounted to $428, $753, and $1,440, respectively.

11. SUBSEQUENT EVENTS:

On March 9 through March 21, 2005, the Company was inspected by the FDA in connection with its DIFOTI® product, a non-invasive imaging device for the detection of dental cavities. On March 21, 2005, the Company was cited for failures to comply fully with FDA quality system regulation, or QSR, mandated procedures. These inspectional findings were discussed in a subsequent meeting with the FDA on April 28, 2005. The Company is in the process of addressing the deficiencies noted.

The Company decided to discontinue all operations associated with its DIFOTI® product effective as of April 5, 2005, in order to focus its resources and attention on the development and commercialization of MelaFind. The Company is currently seeking an acquirer for the DIFOTI® assets, and does not expect to have any significant continuing responsibility for the DIFOTI® business after its disposition.

Losses attributable to DIFOTI® operations discontinued in April 2005 amounted to $201, $12, $426, $81, and $129 for the years ended December 31, 2002, 2003, 2004, and the three months ended March 31, 2004 and 2005, respectively.



l Shares

Electro-Optical Sciences, Inc.

Common Stock

PROSPECTUS

Until , 2005, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Ladenburg Thalmann & Co. Inc. **Stanford Group Company**

, 2005

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. ***Other Expenses of Issuance and Distribution.***

The following table sets forth the costs and expenses to be paid by the Registrant in connection with the sale of the shares of common stock being registered hereby. All amounts are estimates except for the SEC registration fee, the NASD filing fee and the NASDAQ National Market filing fee.

Securities and Exchange Commission registration fee	$	3,884.10
NASD filing fee		4,640.00
NASDAQ National Market filing fee		5,000.00
Accounting fees and expenses		*
Legal fees and expenses		*
Road show expenses		*
Printing and engraving expenses		*
Blue sky fees and expenses		*
Transfer agent and registrar fees and expenses		*
Miscellaneous		*
Total		*

* To be completed by amendment.

ITEM 14. ***Indemnification of Directors and Officers.***

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law.

Article VIII of our third amended and restated certificate of incorporation provides for the indemnification of directors to the fullest extent permissible under Delaware law. Our fourth amended and restated certification of incorporation to be filed upon completion of this offering will contain similar indemnification provisions.

Article IX of our second amended and restated bylaws provides for the indemnification of officers, directors or other agents acting on our behalf if such person acted in good faith and in a manner reasonably believed to be in and not opposed to our best interest and, with respect to any criminal action or proceeding, the indemnified party had no reason to believe his or her conduct was unlawful. Our third amended and restated bylaws to be filed upon completion of this offering will contain similar indemnification provisions.

Prior to the completion of the offering, the Registrant intends to enter into Indemnification Agreements with each of its current directors and officers to provide such directors and officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and amended and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, officer or employee of the Registrant regarding which indemnification is sought. Reference is also made to Section l of the Underwriting Agreement, which provides for the indemnification of officers, directors and controlling persons of the Registrant against certain liabilities. The indemnification provision in the Registrant's restated and amended certificate of incorporation, amended and restated bylaws and the indemnification agreements to be entered into between the Registrant and each of its directors and officers may be sufficiently broad to permit indemnification of the Registrant's directors and officers for liabilities arising under the Securities Act.

The Registrant has directors' and officers' liability insurance for securities matters prior to the closing of this offering.

See also the undertakings set out in response to Item 17.

Reference is made to the following documents filed as exhibits to this Registration Statement regarding relevant indemnification provisions described above and elsewhere herein:

Exhibit Document	Number
Underwriting Agreement	1.1*
Registrant's Third Amended and Restated Certificate of Incorporation	3.1
Registrant's Second Amended and Restated Bylaws	3.3
Second Amended and Restated Investors' Rights Agreement dated October 26, 2004	4.2
Form of Indemnification Agreement	10.1*

* To be filed by amendment.

ITEM 15. ***Recent Sales of Unregistered Securities.***

- On June 20, 2003, we sold 75,000 shares of our common stock at a price of $0.46 per share to Dr. Robert Friedman, a former member of our board of directors, and 75,000 shares of our common stock at a price of $0.46 per share to Breaux Castleman, a member of our board of directors, and the chairman of our board.
- On June 20, 2003, we issued an aggregate of 45,000 shares of our series B preferred stock to the 149 Series B preferred stock investors who originally purchased our Series B preferred stock in 2000 in consideration of certain amendments to their investment agreements.
- On June 20, 2003, we issued a warrant to purchase up to 24,890 shares of our series C preferred stock at an exercise price of $2.26 per share to Koji Miyazaki, one of our series C preferred stock investors.
- On June 20, 2003, we also issued a warrant to Dr. Marek Elbaum, a former member of our board of directors and former Chief Science and Technology Officer, to purchase up to 25,000 shares of our common stock at per share exercise price of $13.00.
- From June 20, 2003 through October 26, 2004, we issued an aggregate of 5,414,779 shares of our series C preferred stock to 73 accredited investors for an aggregate consideration of $12,191,480.
- From June 20, 2003 through October 26, 2004, we issued warrants to purchase up to an aggregate of 2,610,643 shares of our common stock with an exercise price of $13.00 per share to certain purchasers of our series C preferred stock.
- On February 2, 2004, we issued a warrant to purchase up to 121,681 shares of our series C preferred stock with an exercise price $2.26 per share to Health Partners I, LLC.
- In May 2004, we issued 125,000 shares of our common stock at a per share purchase price of $0.46 to accredited investors who loaned an aggregate of $1,000,000 to the company, which loans were evidenced by convertible promissory notes, all of which converted into shares of our series C preferred stock on October 26, 2004.
- On December 10, 2004, we issued a warrant to Allen & Company LLC to purchase up to 75,000 shares of our common stock at an exercise price of $7.00 per share in consideration of Allen & Company's agreement to provide certain advisory services to us.
- From January 1, 2002 to May 15, 2005 we granted options to purchase 852,621 shares of our common stock to employees, directors and consultants under our 1996 Plan and 2003 Plan.

The sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act, or Regulation D promulgated thereunder, or Rule 701

promulgated under Section 3(b) of the Securities Act, as transactions by an issuer not involving a public offering or transactions pursuant to compensatory benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates and instruments issued in such transactions. The sales of these securities were made without general solicitation or advertising. All recipients had adequate access, through their relationship with the Registrant, to information about the Registrant.

ITEM 16. ***Exhibits and Financial Statement Schedules.***

(a) The following exhibits are filed herewith:

Number	Exhibit Title
1.1*	Form of Underwriting Agreement.
3.1	Third Amended and Restated Certificate of Incorporation.
3.2*	Form of Amended and Restated Certificate of Incorporation of Registrant to be effective upon closing of the offering.
3.3	Second Amended and Restated Bylaws of the Registrant as currently in effect.
3.4*	Form of Amended and Restated Bylaws of the Registrant to be effective upon closing of the offering.
4.1*	Specimen Stock Certificate.
4.2	Second Amended and Restated Investor's Rights Agreement dated as of October 26, 2004 by and among the Registrant and the parties listed therein.
5.1*	Opinion of Dreier LLP.
10.1*	Form of Indemnification Agreement for directors and executive officers.
10.2	1996 Stock Option Plan.
10.3	2003 Stock Incentive Plan, as amended.
10.4*	2005 Stock Incentive Plan.
10.5	Employment Agreement dated as of January 5, 2004 between the Registrant and Joseph V. Gulfo.
10.6	Consulting Agreement dated as of May 31, 2005 between the Registrant and Marek Elbaum.
10.7	Lease Agreement dated as of December 16, 1998, by and between the Registrant and Bridge Street Properties LLC, for office space located at One Bridge Street, Irvington, New York.
10.8	First Amendment to the Lease Agreement dated as of May 17, 2001 by and between the Registrant and Bridge Street Properties LLC.
10.9	Second Amendment to the Lease Agreement dated as of June 19, 2003 by and between the Registrant and Bridge Street Properties LLC.
10.10	Lease Agreement dated as of November 23, 2004, by and between the Registrant and Bridge Street Properties LLC, for office space located at 3 West Main Street, Irvington, New York.
10.11*	Consulting Agreement dated as of June 1, 2005 between the Registrant and Gerald Wagner Consulting, LLC.
10.12*	Consulting Agreement dated as of June 20, 2003 between the Registrant and Breaux Castleman, as amended.
23.1	Consent of Eisner LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).

* To be filed by amendment.

(b) Financial statement schedules are omitted because the information called for is not required or is shown either in the financial statements or the notes thereto.

ITEM 17. ***Undertakings.***

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the Underwriting Agreement certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 14 above, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, New York, on this 3rd day of June, 2005.

ELECTRO-OPTICAL SCIENCES, INC.

By: /s/ JOSEPH V. GULFO
Joseph V. Gulfo
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Joseph V. Gulfo and Karen Krumeich and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to sign any registration statement for the same offering covered by the Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Name	Title	Date
Principal Executive Officer:		
/s/ JOSEPH V. GULFO Joseph V. Gulfo	President , Chief Executive Officer and Director	June 3, 2005
Principal Financial Officer and Principal Accounting Officer:		
/s/ KAREN KRUMEICH Karen Krumeich	Vice President, Finance and Chief Financial Officer	June 3, 2005
Additional Directors:		
/s/ BREAUX CASTLEMAN Breaux Castleman	Director, Chairman of the Board of Directors	June 3, 2005
/s/ SIDNEY BRAGINSKY Sidney Braginsky	Director	June 3, 2005

Name	Title	Date
/s/ George C. Chryssis George C. Chryssis	Director	June 3, 2005
/s/ Dan W. Lufkin Dan W. Lufkin	Director	June 3, 2005
/s/ Gerald Wagner Gerald Wagner	Director	June 3, 2005

EXHIBIT INDEX

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23.2*	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).

* To be filed by amendment.

Exhibit 3.1

THIRD AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

ELECTRO-OPTICAL SCIENCES, INC.

Electro-Optical Sciences, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certifies that:

A. The name of the Corporation is Electro-Optical Sciences, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 3, 1997.

B. The Corporation's Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on June 19, 2003.

C. The Second Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 7, 2004.

D. This Third Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL"), and restates, integrates and further amends the provisions of the Corporation's Second Amended and Restated Certificate of Incorporation as follows:

ARTICLE I

The name of the Corporation is Electro-Optical Sciences, Inc.

ARTICLE II

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

The address of the Corporation's registered office in the State of Delaware is c/o United Corporate Services, Inc., 15 East North Street, in the City of Dover, County of Kent, State of Delaware. The name of the registered agent at such address is United Corporate Services, Inc.

ARTICLE III

1. Authorized Capital Stock. The total number of shares of stock that the corporation shall have authority to issue is 46,936,706 consisting of 30,000,000 shares of Common Stock, $0.001 par value per share, and 16,936,706 shares of Preferred Stock, $0.10 par value per share. Of such Preferred Stock, 199,380 shares shall be designated "SERIES A PREFERRED STOCK", 992,986 shares shall be designated "SERIES B PREFERRED STOCK", and 5,744,340 shares shall be designated "SERIES C PREFERRED STOCK". The balance of the authorized shares of Preferred Stock may be designated from time to time by the Board of Directors pursuant to Section 2 of this Article III (the "UNDESIGNATED PREFERRED STOCK").

All shares of Series A Preferred Stock that were issued and outstanding immediately prior to the time of filing of the Corporation's Amended and Restated Certificate of Incorporation on June 19, 2003 were automatically subdivided into a greater number of fully paid and non-assessable shares of Series A Preferred Stock, at a rate of 1,000 shares of Series A Preferred Stock for each then outstanding share of Series A Preferred Stock.

2. Description of Undesignated Preferred Stock. The Undesignated Preferred Stock may be issued in one or more series at such time or times and for such consideration or considerations as the Board of Directors of the Corporation may determine. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Except as to the relative preferences, powers, qualifications, rights and privileges which may be determined by the Board of Directors of the Corporation as described below, all shares of Undesignated Preferred Stock shall be identical. Except as and to the extent otherwise specified herein, different series of Undesignated Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting by class.

The Board of Directors of the Corporation is expressly authorized by a vote of all of the members of the Board of Directors then in office, subject to the limitations prescribed by law and the provisions of this Third Amended and Restated Certificate of Incorporation, as amended from time to time, to provide by adopting a vote or votes, a certificate of which shall be filed in accordance with the DGCL, for the issue of the Undesignated Preferred Stock in one or more classes or series, each with the designations, rights and privileges that shall be stated in the vote or votes creating such classes or series. The authority of the Board of Directors of the Corporation with respect to each such class or series of Undesignated Preferred Stock shall include, without limitation of the foregoing, the right to determine and fix:

(a) The distinctive designation of such class or series and the number of shares to constitute such class or series;

(b) The rate at which dividends on the shares of such class or series shall be declared and paid, or set aside for payment, whether dividends at the rate so determined shall be cumulative, and whether the shares of such class or series shall be entitled to any participating or other dividends in addition to dividends at the rate so determined, and if so on what terms;

(c) The right, if any, of the Corporation to redeem shares of the particular class or series and, if redeemable, the price, terms and manner of such redemption;

(d) The special and relative rights and preferences, if any, and the amount or amounts per share, which the shares of such class or series shall be entitled to receive upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(e) The terms and conditions, if any, upon shares of such class or series shall be convertible into, or exchangeable for, shares of stock, or any other class or classes, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) The obligation, if any, of the Corporation to retire or purchase shares of such class or series pursuant to a sinking fund or fund of a similar nature or otherwise, and the terms and conditions of such obligation;

(g) The voting rights, if any, including special voting rights with respect to the election of directors and matters adversely affecting any such class or series;

(h) The limitations, if any, on the issuance of additional shares of such class or series or any shares of any other class or series of Undesignated Preferred Stock; and

(i) Any other preferences, powers, qualifications, special or relative rights and privileges thereof that the Board of Directors of the Corporation may deem advisable and that are not inconsistent with law and the provisions of this Third Amended and Restated Certificate of Incorporation.

ARTICLE IV

The terms and provisions of the Common Stock and Designated Preferred Stock are as follows:

1. Definitions. For purposes of this Article IV, the following definitions shall apply:

(a) "ACCRETED VALUE" shall mean, as of any date, with respect to a share of Series B Preferred Stock or Series C Preferred Stock, $2.26 (subject to adjustment from time to time for Recapitalizations as set forth herein), plus the amount of dividends that as of such date have accrued and been added thereto pursuant to Section 2(a) hereof.

(b) "CONVERSION PRICE" shall mean $2.26 per share for the Series A Preferred Stock, $2.26 per share for the Series B Preferred Stock, and $2.26 per share for the Series C Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(c) "CORPORATION" shall mean Electro-Optical Sciences, Inc.

(d) "CONVERTIBLE SECURITIES" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(e) "DESIGNATED PREFERRED STOCK" shall mean the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

(f) "DISTRIBUTION" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property.

(g) "LIQUIDATION PREFERENCE" shall mean $5.00 per share for the Series A Preferred Stock, $2.26 per share for the Series B Preferred Stock and $2.26 per share for

the Series C Preferred Stock (in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) "OPTIONS" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(i) "ORIGINAL ISSUE PRICE" shall mean $2.63 per share for the Series A Preferred Stock, $2.62 for the Series B Preferred Stock, and $2.26 for the Series C Preferred Stock (in each case subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(j) "PREFERRED STOCK" shall mean the Designated Preferred Stock and the Undesignated Preferred Stock.

(k) "RECAPITALIZATION" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(l) "REDEEMABLE PREFERRED STOCK" shall mean the Series B Preferred Stock and the Series C Preferred Stock.

2. Dividends.

(a) Series B Preferred Stock and C Preferred Stock. In any calendar year, the holders of outstanding shares of Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive cumulative dividends, when and as declared by the Board of Directors, out of any assets at the time legally available therefor, at an annual rate equal to ten percent of the Accreted Value per share, calculated on the basis of a 360-day year, consisting of twelve 30-day months, which shall accrue and be added to the Accreted Value (when and as elected to be added thereto pursuant to the second-to-last sentence of this Section 2(a)) from the date of issuance thereof and be payable in preference and priority to any declaration or payment of any Distribution on Series A Preferred Stock or Common Stock. The Board of Directors shall have no obligation to declare a dividend in any particular calendar year. No Distributions shall be made with respect to the Series A Preferred Stock or Common Stock until all accrued dividends on the Series B Preferred Stock and Series C Preferred Stock have been paid to the holders of Series B Preferred Stock and Series C Preferred Stock. At the separate election of each of the holders of the shares of Series B Preferred Stock and/or Series C Preferred Stock, each declared and unpaid dividend on their respective shares of Series B Preferred Stock and Series C Preferred Stock may be added to the Accreted Value. Each addition to the Accreted Value in lieu of a dividend to the holders of the Series B Preferred Stock or Series C Preferred Stock as provided in the preceding sentence shall constitute the full payment of such dividend.

(b) Additional Dividends. After the payment or addition to the Accreted Value of the dividends as described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Series A Preferred Stock

and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Series A Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distribution. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be determined by the Board of Directors and the holders of a majority of the shares of Designated Preferred Stock, or if the Board of Directors and such holders fail to agree, at the Corporation's expense by an appraiser chosen by the Board of Directors and reasonably acceptable to such holders.

3. Liquidation Rights.

(a) Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Designated Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock: (i) for each share of Series B Preferred Stock and Series C Preferred Stock held by them, an amount per share equal to the sum of the Accreted Value of each share of Series B Preferred Stock and Series C Preferred Stock on the date of such event and (ii) for each share of Series A Preferred Stock held by them, an amount per share equal to the sum of the Liquidation Preference specified for such share of Series A Preferred Stock and all declared but unpaid dividends (if any) thereon. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Designated Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Designated Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Remaining Assets. After the payment to the holders of Designated Preferred Stock of the full preferential amounts specified above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and pro rata among the holders of the Designated Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Designated Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(c) Liquidation. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction continue to retain

(either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares of the capital stock of the Corporation held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation; or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(d) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as mutually determined by the Board of Directors and the holders of a majority of the shares of Designated Preferred Stock or if the Board of Directors and such holders fail to agree, at the Corporation's expense by an appraiser chosen by the Board of Directors and reasonably acceptable to such holders, except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be to the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution,

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(d), "TRADING DAY" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "CLOSING PRICES" or "CLOSING BID PRICES" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(e) Notice. Written notice of liquidation, dissolution or winding up of the Corporation specifying a payment or payments and the place where such payment or payments shall be payable, shall be delivered in person, mailed by certified mail, return receipt requested, mailed by overnight mail or sent by telecopier not less than thirty days prior to the earliest payment date stated therein, to the holders of record of shares of

Designated Preferred Stock, such notice to be addressed to each such holder at its address shown by the records of the Corporation.

4. Conversion. The holders of the Designated Preferred Stock shall have conversion rights as follows (the "CONVERSION RIGHTS"):

(a) Right to Convert. Each share of Designated Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Designated Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing: (i) the Original Issue Price for such share of Designated Preferred Stock plus, in the case of a share of Series B Preferred Stock or Series C Preferred Stock, any increase in Accreted Value as the result of an election pursuant to Section 2(a) by (ii) the Conversion Price for the relevant series of Designated Preferred Stock. (The number of shares of Common Stock into which each share of Designated Preferred Stock of a series may be converted is hereinafter referred to as the "CONVERSION RATE" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Designated Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Designated Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering filed under the Securities Act of 1933, as amended (the "SECURITIES ACT"), covering the offer and sale of the Corporation's Common Stock, provided that the offering price per share is not less than $10.00 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than $20,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of a majority of the Series C Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "AUTOMATIC CONVERSION EVENT").

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Designated Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined pursuant to Section 3(d) hereof as if such Common Stock were being distributed to stockholders in connection with a liquidation of the Corporation. For such purpose, all shares of Designated Preferred Stock held by each holder of Designated Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Designated Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Designated Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall

give written notice to the Corporation at such office that he elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Designated Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Designated Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Designated Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Designated Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Designated Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then have been actually delivered to such holder.

The Corporation shall, as soon as practicable after a holder's surrender for conversion of a certificate or certificates representing Designated Preferred Stock, or after the holder's execution of an agreement to indemnify the Corporation as provided in the preceding paragraph, issue and deliver at such office to such holder of Designated Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he or she shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Designated Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Designated Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale or liquidation of the Corporation, the conversion may, at the option of any holder tendering Designated Preferred Stock for conversion, be conditioned upon the closing of such transaction, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Designated Preferred Stock shall not be deemed to have converted such Designated Preferred Stock until immediately prior to the closing of such transaction.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), "ADDITIONAL SHARES OF COMMON" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Third Amended and Restated Certificate of Incorporation other than:

(1) Common Stock issued or issuable to key employees and other persons (including, without limitation, directors, officers, consultants and scientific collaborators) employed or engaged by the Corporation pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or arrangements approved by the Board of Directors, or upon exercise of options or warrants granted to such parties pursuant to any such program, plan or arrangement approved by the Board of Directors;

(2) shares of Common Stock issued or issuable upon the exercise or conversion of Options or Convertible Securities outstanding as of the date of the filing of this Third Amended and Restated Certificate of Incorporation;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Designated Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof; and

(4) shares of Common Stock or Designated Preferred Stock of the Corporation which are otherwise excluded by the affirmative vote or consent of the holders of a majority of the Series C Preferred Stock then outstanding.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Designated Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Designated Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the date of the filing of this Third Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Designated Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Designated Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Designated Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Designated Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange;

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of

the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.

In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) for a consideration per share less than the applicable Conversion Price of Series B Preferred Stock or Series C Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Series B Preferred Stock or Series C Preferred Stock, as applicable, shall be reduced, concurrently with such issue, to a price equal to the consideration per share received by the Corporation for such Additional Shares of Common so issued. Notwithstanding the foregoing, such Conversion Price or Prices shall not be reduced at such time if the amount of such reduction would be less than $0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal $0.01 or more in the aggregate.

(v) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined by the Board of Directors and the holders of a majority of the shares of Designated Preferred Stock, or if the Board of Directors and such holders fail to agree, at the Corporation's expense by an appraiser chosen by the Board of Directors and reasonably acceptable to such holders; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, by the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as determined by the Board of Directors and the holders of a majority of the shares of Designated Preferred Stock, or if the Board of Directors and such holders fail to agree, at the Corporation's expense by an appraiser chosen by the Board of Directors and reasonably acceptable to such holders.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Designated Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Designated Preferred Stock. In the event the outstanding shares of Designated Preferred Stock or a series of Designated Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Designated Preferred Stock, the Accreted Value, the Original Issue Price and Liquidation Preference of the affected series of Designated Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased; provided, however, that upon the effectiveness of the subdivision of the Series A Preferred Stock pursuant to Article III hereof, no such adjustments shall be made. In the event the outstanding shares of Designated Preferred Stock or a series of Designated Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Designated Preferred Stock, the Accreted Value, Original Issue Price and Liquidation Preference of the affected series of Designated Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to the liquidation rights set forth in Section 3 above, if the Common Stock issuable upon conversion of the Designated Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, each

holder of such Designated Preferred Stock shall have the right thereafter to convert such shares of Designated Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Designated Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) No Impairment. The Corporation will not through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Designated Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 4(h) shall prohibit the Corporation from amending its Third Amended and Restated Certificate of Incorporation with the requisite consent of its stockholders and the Board of Directors.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Designated Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Designated Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Designated Preferred Stock.

(j) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Designated Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of the majority of the outstanding shares of such series. Any such waiver shall bind all future holders of shares of such series of Designated Preferred Stock.

(k) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any dividend or Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the corporation pursuant to Section 3(d); then, in connection with each such event, this Corporation shall send to the holders of the Designated Preferred Stock at least 30 days' prior written notice of the date on which a record shall be taken for such dividend, Distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Designated Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

In the event the notice requirements of this section are not complied with or waived, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Designated Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in section.

(l) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Designated Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Designated Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Designated Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Designated Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Designated Preferred Stock. Each holder of Designated Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Designated Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Designated Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Designated Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional

votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Designated Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Election of Directors. The Board of Directors shall consist of nine members. The holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect four (4) members of the Corporation's Board of Directors, the holders of Common Stock (excluding Common Stock issued or issuable upon conversion of Designated Preferred Stock), voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors, and the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors, in each case, at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of stockholders as those who, would be entitled to vote to fill such vacancy shall vote to fill such vacancy. A director may be removed from the Board of Directors with or without cause by the vote or consent of the holders of the outstanding class or classes with voting power entitled to elect such director in accordance with the General Corporation Law of the state of Delaware.

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

(f) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Redemption.

(a) During the three month periods subsequent to each of the fifth and the sixth anniversary of the first issuance of Series C Preferred Stock (the "REDEMPTION PERIODS"), and at the election of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, this Corporation shall redeem, out of funds legally available therefor, all or part of the outstanding shares of Series C Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in two (2) equal annual installments (each a "SERIES C REDEMPTION DATE"). The Corporation shall redeem the shares of Series C Preferred Stock by paying in cash an amount per share equal to the Accreted Value for such Series C Preferred Stock (the "SERIES C REDEMPTION PRICE"). The number of shares of Series C Preferred Stock that the Corporation shall be required under this Section 6(a) to redeem on any one (1) Series C Redemption Date shall be equal to the amount determined by dividing: (a) the aggregate number of shares of Series C Preferred Stock elected to be redeemed by the holders of at least a majority of the Series C Preferred Stock, by (b) the number of remaining Series C Redemption Dates (including the Series C Redemption Date to which such calculation applies). If the funds legally available for redemption of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full respective Series C Redemption Prices, the Corporation shall effect such redemption to the extent funds are

available. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series C Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Series C Redemption Date, but which it has not redeemed. Any redemption effected pursuant to Section 6(a) shall be made pro rata among the holders of the Series C Preferred Stock so that each holder of Series C Preferred Stock shall receive a redemption payment equal to a fraction of the aggregate amount available for redemption, the numerator of which is the number of shares of Series C Preferred Stock held by such holder multiplied by the Series C Redemption Price, and the denominator of which is the number of shares of Series C Preferred Stock outstanding multiplied by the Series C Redemption Price.

(b) During the Redemption Periods, and at the election of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting as a separate class, and a majority of the then outstanding shares of Series C Preferred Stock, voting as a separate class, this Corporation shall redeem, out of any funds legally available therefor, all or part of the outstanding shares of Series B Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in two (2) equal annual installments (each a "SERIES B REDEMPTION DATE"). The Corporation shall redeem the shares of Series B Preferred Stock by paying in cash an amount per share equal to the Accreted Value for such Series B Preferred Stock (the "SERIES B REDEMPTION PRICE"). The number of shares of Series B Preferred Stock that the Corporation shall be required under this Section 6(b) to redeem on any one (1) Series B Redemption Date shall be equal to the amount determined by dividing: (a) the aggregate number of shares of Series B Preferred Stock elected to be redeemed by the holders of at least a majority of the Series B Preferred Stock, by (b) the number of remaining Series B Redemption Dates (including the Series B Redemption Date to which such calculation applies). If the funds legally available for redemption of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full respective Series B Redemption Prices, the Corporation shall effect such redemption to the extent funds are available. At any time thereafter when additional funds of the Corporation become legally for the redemption of shares of Series B Preferred Stock such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Series B Redemption Date, but which it has not redeemed. Any redemption effected pursuant to Section 6(a) shall be made pro rata among the holders of the Series B Preferred Stock so that each holder of Series B Preferred Stock shall receive a redemption payment equal to a fraction of the aggregate amount available for redemption, the numerator of which is the number of shares of Series B Preferred Stock held by such holder multiplied by the Series B Redemption Price, and the denominator of which is the number of shares of Series B Preferred Stock outstanding multiplied by the Series B Redemption Price.

(c) As used herein and in Sections 6(d) and 6(e) below, the term "REDEMPTION DATE" shall refer to each of "Series C Redemption Date" and "Series B Redemption Date" and the term "REDEMPTION PRICE" shall refer to each of "Series C Redemption Price" and "Series B Redemption Price." At least fifteen (15), but no more than thirty (30) days prior to each Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business

day next preceding the day on which notice is given) of the Redeemable Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (the "REDEMPTION NOTICE"). Except as provided herein, on or after the Redemption Date each holder of Redeemable Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after a Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Redeemable Preferred Stock designated for redemption in the Redemption Notice as holders of Redeemable Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. The shares of Redeemable Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(e) On or prior to each Redemption Date, the Corporation shall deposit the Redemption Price of all shares of Redeemable Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of $100,000,000, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered a share certificate to the Corporation pursuant to Section 6(d) above. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust corporation, payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 6(e) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 6(e) remaining unclaimed at the expiration of two (2) years following the

Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

7. Amendments and Changes. As long as any of the Series C Preferred Stock shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series C Preferred Stock, voting together as a separate class:

(a) amend, alter or repeal any provision of, or add any provision to the this Third Amended and Restated Certificate of Incorporation or Bylaws of the Corporation if such action would alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of, the Series C Preferred Stock;

(b) increase or decrease (other than decreases resulting from conversion of the Series C Preferred Stock) the authorized number of shares of Series C Preferred Stock;

(c) authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends or payments upon liquidation senior to or on a parity with any series of Series C Preferred Stock or having voting rights other than those granted to the Series C Preferred Stock generally;

(d) enter into any transaction or series of related transactions deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(c) above.

(e) authorize a merger or sale of substantially all of the assets of the Corporation;

(f) effect any recapitalization or reorganization of the Corporation;

(g) increase the size of the Board of Directors;

(h) encumber or grant a security interest in all or substantially all of the assets of the Corporation in connection with an indebtedness of the Corporation;

(i) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity;

(j) declare or pay any Distribution (as defined in Section 2(b)) with respect to the Designated Preferred Stock (other than as set forth in Section 6 hereof), Common Stock or other capital stock of the Corporation;

(k) enter into an agreement obligating the Corporation to effect any of the foregoing; or

(l) amend this Section 7.

8. Reissuance of Designated Preferred Stock. In the event that any shares of Designated Preferred Stock shall be converted pursuant to Section 4, redeemed pursuant to Section 6 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by the Corporation.

9. Notices. Any notice required by the provisions of this Article IV to be given to the holders of Preferred Stock shall be deemed given, when and if delivered personally, or, if sent by the United States mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE VIII

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3. Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Third Amended and Restated Certificate of Incorporation inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

The undersigned declares under penalty of perjury that the matters set forth in foregoing certificate are true of his own knowledge.

IN WITNESS WHEREOF, the undersigned has executed this Third Amended and Restated Certificate of Incorporation this 26th day of October, 2004.

By: /s/ Joseph V. Gulfo

Joseph V. Gulfo, M.D.
Chief Executive Officer

Exhibit 3.3

SECOND AMENDED AND RESTATED BYLAWS OF

ELECTRO-OPTICAL SCIENCES, INC.

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SECOND AMENDED AND RESTATED BYLAWS OF ELECTRO-OPTICAL SCIENCES, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of Electro-Optical Sciences, Inc. (the "Corporation") shall be established and maintained at the office of United Corporate Services, Inc., 15 East North Street, City of Dover, County of Kent, State of Delaware, and the Corporation shall be the registered agent of the Corporation in charge thereof.

1.2 OTHER OFFICES.

The Corporation may have offices, either within or without the State of Delaware at such place or places as the Board of Directors of the Corporation (the "Board") may, from time to time, appoint or the business of the Corporation may require.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware, as the Board, by resolution, shall determine and as set forth in the notice of the meeting.

2.2 ANNUAL MEETING.

The annual meeting of stockholders shall be held each year. The Board shall designate the date and time of the annual meeting. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding business day. At the annual meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING.

Special meetings of the stockholders, for any purpose or purposes other than the election of directors, unless otherwise prescribed by statute or by the Second Amended and Restated Certificate of Incorporation (as amended from time to time, the "Certificate of Incorporation"), may be called by the president and shall be called by the chairman of the board, the chief executive officer or secretary at the request in writing of a majority of the Board, at the request of a majority of the holders of the then outstanding Series C Preferred Stock, $0.10 par value per share, of the Corporation ("Series C Preferred Stock"), or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

The officer(s) receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with the provisions of Sections 2.4 and 2.5 of these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

2.4 NOTICE OF STOCKHOLDERS' MEETINGS.

All notices of meetings of stockholders shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting except when the stockholder attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the Corporation's records.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 QUORUM.

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, such quorum is not present or represented at any meeting of the stockholders, then the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not he given of the adjourned meeting if the time, place if any thereof, and the means of remote communications if any by which stockholders and proxy holders may be

deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the continuation of the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 CONDUCT OF BUSINESS.

Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting: the chairman of the board, if any, the vice-chairman of the board, if any, the president, a vice-president, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The secretary of the Corporation, shall act as secretary of every meeting, but if the secretary is not present, the chairman of the meeting shall appoint a secretary of the meeting.

2.9 VOTING.

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the Delaware General Corporation Law, as the same may be amended from time to time (the "DGCL").

Except as may be otherwise provided in the Certificate of Incorporation or these bylaws, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held by such stockholder, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. Upon demand of any stockholder, the vote for directors and the vote upon any question before the meeting shall be by ballot. All elections for directors shall be decided by plurality vote and all other questions shall be decided by majority vote, except as otherwise provided by the Certificate of Incorporation or the laws of the State of Delaware.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Unless otherwise provided in the Certificate of Incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of

the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other such action.

If the Board does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board is necessary, shall be the day on which the first written consent is expressed.

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

2.12 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS.

The directors, in advance of any meeting, may, but need not, appoint one or more Inspectors of Election to act at the meeting or any adjournment thereof. If an Inspector or Inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more Inspectors. In case any person who may be appointed as an Inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each Inspector, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of Inspector at such meeting with strict impartiality and according to the best of his ability. The Inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stick represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the Inspector or Inspectors, if any, shall make a report in writing of any challenge, question or matter determined by him or them and execute a certificate of any fact found by him or them.

ARTICLE III - DIRECTORS

3.1 POWERS.

Subject to the provisions of the DGCL and any limitations in the Certificate of Incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

3.2 NUMBER OF DIRECTORS.

The number of directors shall be as set forth in the Certificate of Incorporation.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the Certificate of Incorporation or these bylaws. The Certificate of Incorporation or these bylaws may prescribe other qualifications for directors. Each director, including a director elected to fill a vacancy, shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. All elections of directors at a meeting of stockholders, shall be by written ballot, unless otherwise provided in the Certificate of Incorporation.

3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing to the Corporation. When one or more directors so resigns and the resignation is effective at a future date, unless as otherwise provided in the Certificate of Incorporation, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the Certificate of Incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to beheld to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

3.5 REGULAR MEETINGS.

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

3.6 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board may be called by the Chairman of the Board, Chief Executive Officer or by the Secretary on the written request of any two directors on at least two days' notice to each director and shall be held at such place or places as may be determined by the directors, or as shall be stated in the call of the meeting. For purposes of this Article III, Section 6 only, notice shall be given by telephonic communication or by telecopier.

3.7 QUORUM.

At all meetings of the Board, a majority of the authorized number of directors, including at least three (3) directors entitled to be elected by the holders of the Series C Preferred Stock of the Corporation pursuant to the Certificate of Incorporation, shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.8 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board or committee.

3.9 FEES AND COMPENSATION OF DIRECTORS.

Directors shall not receive any stated salary for their services as directors or as members of committees but, by resolution of the Board of Directors, fixed fees and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

3.10 APPROVAL OF LOANS TO OFFICERS.

The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Corporation.

3.11 REMOVAL OF DIRECTORS.

Any director or directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of all the shares of stock outstanding and entitled to vote, at a special meeting of the stockholders called for the purpose and the vacancies thus created may be filled, at the meeting held for the purpose of removal, by the affirmative vote of a majority in interest of the stockholders entitled to vote.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

The Board may designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of

the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, including, but not limited to: (i) adoption, amendment or repeal of any bylaw of the Corporation, (ii) amendment of the Certificate of Incorporation, (iii) adoption of an agreement of merger or consolidation, (iv) recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property assets, or (v) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless a resolution of the Board, these bylaws, or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

4.2 COMMITTEE MINUTES.

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

4.3 MEETINGS AND ACTION OF COMMITTEES.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (regular meetings);

(ii) Section 3.6 (special meetings and notice);

(iii) Section 3.7 (quorum);

(iv) Section 7.13 (waiver of notice); and

(v) Section 3.8 (action without a meeting)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. However:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may

adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V - OFFICERS

5.1 OFFICERS.

The executive officers of the Corporation shall be a chairman of the board, chief executive officer, president, chief operating officer, chief science and technology officer, one or more vice-presidents, a treasurer and a secretary.

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 and 5.5 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS.

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.2.

5.6 CHAIRPERSON OF THE BOARD

The chairperson of the board, if such an officer be elected, shall, if present, preside at meetings of the Board and of the stockholders and exercise and perform such other powers and

duties as may from time to time be assigned to him by the Board or as may be prescribed by these bylaws. If there is no chief executive officer or president, then the chairperson of the board shall also be the chief executive officer of the Corporation and shall have the powers and duties prescribed in section 5.7 of these bylaws.

5.7 CHIEF EXECUTIVE OFFICER.

Subject to any such supervisory powers, if any, as the Board may give to the chairperson of the board, the chief executive officer, if any, shall, subject to the control of the Board, have general supervision, direction, and control of the business and affairs of the Corporation and shall report directly to the Board. All other officers, officials, employees and agents shall report directly or indirectly to the chief executive officer. The chief executive officer shall see that all orders and resolutions of the Board are carried into effect. In the absence of a chairperson of the Board, the chief executive officer shall preside at all meetings of the stockholders and at all meetings of the Board.

5.8 CHIEF OPERATING OFFICER.

The chief operating officer shall be designated by the chief executive officer with the consent of the Board, and shall function as the chief operating officer.

5.9 CHIEF SCIENCE AND TECHNOLOGY OFFICER

The chief science and technology officer shall be appointed by the Board and subject to the control of the chief executive officer. The chief science and technology officer's responsibilities shall include: (i) management of the Corporation's efforts to obtain United States Food and Drug Administration ("FDA") approval of new products , (ii) formulation of FDA strategy and interaction with FDA panels, (iii) the development and protection of intellectual property associated with such technologies that are necessary to the conduct of the Corporation's business as it is presently and proposed to be conducted, (iv) development of alternative strategies for the commercialization of such technologies, (v) developing prototypes for new products, and (vi) securing research grants from government entities or private foundations. The chief science and technology officer shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board, these bylaws, the chief executive officer or the chairperson of the Board.

5.10 PRESIDENT.

In the absence or disability of the chief executive officer, the president shall perform all the duties of the chief executive officer. When acting as the chief executive officer, the president shall have all the powers of and be subject to all the restrictions upon, the chief executive officer. The president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board, these bylaws, the chief executive officer or the chairperson of the Board.

5.11 VICE PRESIDENTS.

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the Board or, if not ranked, a vice president designated by the Board, shall perform all the duties of the president. When acting as the president, the appropriate vice president shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board, these bylaws, the chairperson of the Board, the chief executive officer or, in the absence of a chief executive officer, the president.

5.12 SECRETARY.

The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show

(i) the time and place of each meeting;

(ii) whether regular or special (and, if special, how authorized and the notice given);

(iii) the names of those present at directors' meetings or committee meetings; (iv) the number of shares present or represented at stockholders' meetings; and

(iv) and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register showing;

(i) the names of all stockholders and their addresses;

(ii) the number and classes of shares held by each;

(iii) the number and date of certificates evidencing such shares; and

(iv) the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these bylaws. The secretary shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these bylaws.

5.13 SALARIES.

The salaries of all officers shall be fixed by the Board, and the fact that any officer is a director shall not preclude him from receiving a salary as an officer, or from voting upon the resolution providing the same.

5.14 REPRESENTATION OF SHARES OF OTHER CORPORATIONS.

The chairperson of the Board, the president, any vice president, the treasurer, the secretary or assistant secretary of the Corporation, or any other person authorized by the Board or the president or a vice president, is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.15 AUTHORITY AND DUTIES OF OFFICERS.

In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board or the stockholders.

ARTICLE VI - RECORDS AND REPORTS

6.1 MAINTENANCE AND INSPECTION OF RECORDS.

The Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent so to act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal executive office.

6.2 INSPECTION BY DIRECTORS.

Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily

order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

ARTICLE VII - GENERAL MATTERS

7.1 CHECKS.

From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

7.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.3 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairperson or vice-chairperson of the Board, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon

partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.4 SPECIAL DESIGNATION ON CERTIFICATES.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.5 LOST CERTIFICATES.

Except as provided in this Section 7.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.6 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

7.7 DIVIDENDS.

The Board, subject to any restrictions contained in either (i) the DGCL, or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.8 FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.9 SEAL.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.10 TRANSFER OF STOCK.

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

7.11 STOCK TRANSFER AGREEMENTS.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.12 REGISTERED STOCKHOLDERS.

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof except as otherwise provided by the laws of Delaware.

7.13 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, personal notice is not meant unless expressly so stated and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the

fifth day following such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by Statute

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these bylaws.

ARTICLE VIII - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Corporation may, in its Certificate of Incorporation, confer the power to adopt, amend or repeal bylaws upon the directors.

ARTICLE IX - INDEMNIFICATION

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification then permitted prior thereto), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such indemnitee in connection with such action, suit or proceeding, if the indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of the proceeding, whether by judgment, order, settlement, conviction or upon plea of nolo contendre or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe such conduct was unlawful.

Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise

(including employee benefit plans) shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification than permitted prior thereto), against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person should have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such suit or action was brought, shall determine, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

9.2 PREPAYMENT OF EXPENSES.

The Corporation shall pay the expenses incurred by any officer or director of the Corporation, and may pay the expenses incurred by any employee or agent of the Corporation, in defending any proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by a person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article 9 or otherwise.

9.3 DETERMINATION; CLAIM.

If a claim for indemnification or payment of expenses under this Article 9 is not paid in full within sixty days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

9.4 NON-EXCLUSIVITY OF RIGHTS.

The rights conferred on any person by this Article 9 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.5 INSURANCE.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or

not the Corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.6 OTHER INDEMNIFICATION.

The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

9.7 AMENDMENT OR REPEAL.

Any repeal or modification of the foregoing provisions of this Article 9 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

9.8 BINDING EFFECT

The indemnification and advancement of expenses provided by this article shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

ELECTRO-OPTICAL SCIENCES, INC.

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary of Electro-Optical Sciences, Inc., a Delaware corporation, and that the foregoing bylaws were adopted as the Corporation's bylaws on February 2, 2004 by the Corporation's Board of Directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this 26 day of October 2004.

/s/ WILLIAM R. BRONNER

Secretary

Exhibit 4.2

EXECUTION COPY

SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Second Amended and Restated Investors' Rights Agreement (this "AGREEMENT") is made as of October 26, 2004 by and among Electro-Optical Sciences, Inc., a Delaware corporation (the "COMPANY") and the investors (the "EXISTING INVESTORS") which are parties to the Company's Amended and Restated Investors' Rights Agreement dated as of June 20, 2003 as such agreement was amended by that certain Amendment to the Amended and Restated Investors' Rights Agreement dated as of March 21, 2004 (the "PRIOR RIGHTS AGREEMENT"), the New Investors (as defined below) and the Former HP I Equity Holders (as defined below). Capitalized terms used herein, but not otherwise defined shall have the meanings ascribed to such terms in Section 4 hereof.

RECITALS

WHEREAS, the Existing Investors hold shares of the Company's Series B Preferred Stock, par value $0.01 per share (the "SERIES B PREFERRED STOCK"), the Company's Series C Preferred Stock, par value $0.01 per share (the "SERIES C PREFERRED STOCK"), the Company's Common Stock, par value $0.001 per share (the "COMMON STOCK"), and/or warrants to purchase Common Stock and/or Series C Preferred Stock (the "WARRANTS" and the shares of Common Stock issuable upon exercise thereof the "WARRANT COMMON SHARES" and the shares of Series C Preferred Stock issuable upon exercise thereof the "WARRANT SERIES C SHARES");

WHEREAS, the Existing Investors possess certain rights pursuant to the Prior Rights Agreement;

WHEREAS, as of the date hereof the Company is selling shares of Series C Preferred Stock and Warrants (the "OCTOBER 2004 SERIES C FINANCING") to certain purchasers as identified on Exhibit A attached hereto under the heading "New Investors" (the "NEW INVESTORS") and it is a condition precedent to the consummation of the October 2004 Series C Financing that the New Investors become parties to this Agreement;

WHEREAS, Health Partners I, LLC ("HP I"), a current holder of Series C Preferred Stock and Warrants, may be dissolved after consummation of the October 2004 Series C Financing and upon such dissolution the shares of Series C Preferred Stock and the Warrants held by HP I will be transferred to the former equity holders of HP I as identified on Exhibit A attached hereto under the heading "Former HP I Equity Holders" (the "FORMER HP I EQUITY HOLDERS"); and

WHEREAS, the Company and the Existing Investors desire to have the Former HP I Equity Holders become parties to this Agreement effective upon the dissolution of HP I;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Company, the undersigned Existing Investors (constituting holders of a majority of the Registrable Securities (as defined in the Prior Rights Agreement)), the undersigned New Investors and the undersigned Former HP I Equity Holders hereby agree that the Prior Rights

Agreement shall be amended and restated in its entirety by this Agreement, and the parties hereto further agree as follows:

SECTION 1

RESTRICTIONS ON TRANSFERABILITY OF SECURITIES; REGISTRATION RIGHTS

1.1 RESTRICTIONS ON TRANSFER.

(a) Each Holder agrees not to make any disposition of all or any portion of the Registrable Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 1.1, provided and to the extent such Section 1.1 is then applicable, and:

(i) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) Such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and, if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. The Company will not require opinions of counsel for transactions made pursuant to Rule 144 except when counsel to the Company reasonably believes it appropriate.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder which is (A) a partnership to its partners or retired partners in accordance with partnership interests, (B) a corporation to its stockholders in accordance with their interest in the corporation, (C) a limited liability company to its members or former members in accordance with their interest in the limited liability company, or (D) to the Holder's family member or trust for the benefit of an individual Holder, provided the transferee will be subject to the terms of this Section 1.1 to the same extent as if such transferee were an original Holder hereunder.

(b) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF

THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS FOLLOWING THE EFFECTIVE DATE OF A REGISTRATION STATEMENT OF THE COMPANY FILED UNDER THE ACT, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

(c) The Company shall be obligated to reissue unlegended certificates at the request of any holder thereof if the holder shall have (i) obtained an opinion of counsel at such Holder's expense (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend, and (ii) delivered such securities to the Company or its transfer agent.

(d) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

1.2 REQUESTED REGISTRATION.

(a) Request for Registration. If the Company shall receive from Initiating Holders at any time or times not earlier than the earlier of (i) the fifth anniversary of the date of this Agreement or (ii) one (1) year after the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public, a written request that the Company effect any registration with respect to all or a part of the Registrable Securities, the aggregate proceeds of which (after deduction for underwriter's discounts and expenses, related to the issuance) exceed $2,000,000 the Company will:

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such written notice from the Company is mailed or delivered.

The Company shall not be obligated to effect, or to take any action to effect, any such registration pursuant to this Section 1.2:

(A) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(B) After the Company has initiated two such registrations pursuant to Section 1.2(a), above (counting for these purposes only registrations which have been declared or ordered effective and pursuant to which securities have been sold, and registrations which have been withdrawn by the Holders as to which the Holders have not elected to bear the Registration Expenses pursuant to Section 1.4 hereof, and would, absent such election, have been required to bear such expenses);

(C) During the period starting with the date that is ninety (90) days prior to the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration; provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective; or

(D) If the Initiating Holders propose to dispose of shares of Registrable Securities which may immediately be registered on Form S-3 pursuant to a request made under Section 1.5 hereof.

(b) Deferral of Filing. Subject to the foregoing clauses (A) through (D), the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as practicable after receipt of the request or requests of the Initiating Holders; provided, however, that if (i) in the good faith judgment of the Board of Directors of the Company, such registration would be detrimental to the Company and the Board of Directors of the Company concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Initiating Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders, and, provided further, that the Company shall not defer its obligation in this manner more than twice in any twelve-month period.

The registration statement filed pursuant to the request of the Initiating Holders may, subject to the provisions of Section 1.13 hereof, include other securities of the Company, with respect to which registration rights have been granted, and may include securities of the Company being sold for the account of the Company.

(c) Underwriting. If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the

Company as a part of their request made pursuant to Section 1.2(a) and the Company shall include such information in the written notice referred to in Section 1.2(a)(i). In such event, the right of any Holder to registration pursuant to Section 1.2 shall be conditioned upon such Holder's participation in such underwriting, and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder with respect to such participation and inclusion) to the extent provided herein. A Holder may elect to include in such underwriting all or a part of the Registrable Securities he, she or it holds. All Holders and other persons proposing to distribute their securities through such underwriting, including the Company, shall enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders, which underwriters are reasonably acceptable to the Company. Notwithstanding any other provision of this Section 1.2, if the representative of the underwriters advises the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of shares to be included in the underwriting or registration shall be allocated as set forth in Section 1.13 hereof. If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Initiating Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this Section 1.2(c), then the Company shall offer to all holders who have retained rights to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders requesting additional inclusion in accordance with Section 1.13.

1.3 COMPANY REGISTRATION.

(a) If the Company should determine to register any of its securities either for its own account, the account of a security holder or holders exercising their respective demand registration rights, in either case, other than in a registration relating solely to employee benefit plans, relating to the offer and sale of debt securities, relating to a corporate reorganization or other transaction on Form S-4, made on any registration form that does not permit secondary sales, or made pursuant to Section 1.2 or 1.5 hereof the Company will:

(i) promptly give to each Holder written notice thereof; and

(ii) use its commercially reasonable efforts to include in such registration (and in any related qualification under blue sky laws or other compliance), except as set forth in Section 1.3(b) below, and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made by any Holder and received by the Company within fifteen (15) days after the written notice from the Company described in clause (i) above is mailed or delivered by the Company. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 1.3(a)(i). In such event, the right of any Holder to registration pursuant to this Section 1.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. The Company and all Holders proposing to distribute their securities through such underwriting shall (together with the Company and the other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this Section 1.3, if the representative of the underwriters advises the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the representative may (subject to the limitations set forth below) exclude all Registrable Securities from, or limit the number of Registrable Securities to be included in, the registration and underwriting. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated first to the Company for securities being sold for its own account and thereafter as is set forth in Section 1.13. If any person does not agree to the terms of any such underwriting, he or she shall be excluded therefrom by written notice from the Company or the underwriter. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriter(s) may round the number of shares allocated to any Holder to the nearest 100 shares.

If shares are so withdrawn from the registration and if the number of shares of Registrable Securities to be included in such registration was previously reduced as a result of marketing factors, the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among the persons requesting additional inclusion in accordance with Section 1.13 hereof.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

1.4 EXPENSES OF REGISTRATION. All Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Sections 1.2, 1.3 and 1.5 hereof, and customary fees of one counsel for the selling Holders in the case of registrations pursuant to Section 1.2, shall be borne by the Company; provided, however, that if the Holders bear the Registration Expenses for any registration proceeding begun pursuant to Section 1.2 and subsequently withdrawn by the Holders registering shares therein, such registration proceeding shall not be counted as a requested registration pursuant to Section 1.2 hereof. Furthermore, in the event that a withdrawal by the Holders is based upon material adverse information relating to

the Company that is different from the information known or available (upon request made to the Company or otherwise) to the Holders requesting registration at the time of their request for registration under Section 1.2, such registration shall not be treated as a "COUNTED REGISTRATION" for purposes of Section 1.2 hereof, even though the Holders do not bear the Registration Expenses for such registration. All Selling Expenses relating to securities so registered shall be borne by the holders of such securities pro rata on the basis of the number of shares of securities so registered on their behalf, as shall any other expenses in connection with the registration required to be borne by the Holders of such securities.

1.5 REGISTRATION ON FORM S-3.

(a) After its initial public offering, the Company shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this Section 1, the Holders of Registrable Securities shall have the right to request registrations on Form S-3 (such requests shall be in writing and shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), provided, however, that the Company shall not be obligated to effect any such registration (i) in the circumstances described in clauses (A) and (C) of Section 1.2(a), (ii) if the Company shall furnish the certification described in Section 1.2(b) (but subject to the limitations set forth therein), (iii) if, in a given twelve-month period, the Company has effected two (2) such registrations in such period or (iv) if it is to be effected more than five (5) years after the Company's initial public offering.

(b) If a request complying with the requirements of Section 1.5(a) hereof is delivered to the Company, the provisions of Sections 1.2(a)(i) and (ii) and Section 1.2(b) hereof shall apply to such registration. If the registration is for an underwritten offering, the provisions of Sections 1.2(c) and 1.2(d) hereof shall apply to such registration.

1.6 REGISTRATION PROCEDURES. In the case of each registration effected by the Company pursuant to Section 1, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will:

(a) prepare and file with the Commission a registration statement and such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for at least a period of 90 days or until all of such Registrable Securities have been disposed of (if earlier) and to comply with the provisions of the Securities Act with respect to the sale or other disposition of such Registrable Securities;

(b) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as such Holders or underwriters may reasonably request in order to facilitate the public offering of such securities;

(c) furnish, at least five business days before filing a registration statement that registers such Registrable Securities, a prospectus relating thereto, or any amendments or supplements relating to such a registration statement or prospectus, to one counsel selected by the holders of a majority of such Registrable Securities (the "SELLING INVESTORS' COUNSEL"), with copies of all such other documents as are proposed to be filed (it being understood that such five business day period need not apply to successive drafts of the same document proposed to be filed so long as such successive drafts are supplied to the Selling Investors' Counsel in advance of the proposed filing by a period of time that is customary and reasonable under the circumstances);

(d) notify the Selling Investors' Counsel in writing promptly of (i) the receipt by the Company of any notification by the Commission of comments with respect to such registration statement or prospectus (or any amendment or supplement thereto), any request by the Commission for the amendment or supplementation thereof, or for additional information with respect thereto, (ii) the receipt by the Company of any notification by the Commission of any stop order issued suspending the effectiveness of such registration statement or prospectus (or any amendment or supplement thereto), or the initiation or threatened initiation of any proceeding for that purpose, and (iii) the receipt by the Company of any notification with respect to the suspension of the qualification of such Registrable Securities for sale in any jurisdiction, or the initiation or threatened initiation of any proceeding for such purposes;

(e) use its commercially reasonable efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any Investors holding such Registrable Securities reasonably requests and do any and all other acts and things which may reasonably be necessary or advisable to enable such Investors holding such Registrable Securities to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investors; provided, however, that the Company will not be obligated to register or qualify in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification or compliance, unless the Company is already subject to service of process in such jurisdiction, and except as may be required by the Securities Act;

(f) notify each Investor holding such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein, or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) in the case of an underwritten offering, use its commercially reasonable efforts to obtain from its independent certified public accountants "comfort" letters in customary form and covering such matters of the type customarily covered by comfort letters;

(h) in the case of an underwritten offering, use its commercially reasonable efforts to obtain from its counsel an opinion or opinions in customary form;

(i) provide a transfer agent and registrar (which may be the same entity and which may be the Company) for such Registrable Securities;

(j) issue to any underwriter to which any seller of Registrable Securities may sell shares in such offering certificates evidencing such Registrable Securities; and,

(k) list such Registrable Securities on any national securities exchange on which any shares of the Common Stock are listed or, if the Common Stock is not listed on a national securities exchange, use its commercially reasonable efforts to qualify such Registrable Securities for inclusion on the automated quotation system of the National Association of Securities Dealers, Inc. or such national securities exchange as the holders of a majority of such Registrable Securities shall request.

1.7 INDEMNIFICATION.

(a) The Company will indemnify each Holder, each of its officers, directors and partners, legal counsel, and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this Section 1, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of the Securities Act or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification, or compliance, and will reimburse each such Holder, each of its officers, directors, partners, legal counsel, and accountants and each person controlling such Holder, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action, provided that the obligations of the Company hereunder shall not apply to the extent that any such claim, loss, damage, liability, or expense arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder or underwriter and stated to be specifically for use therein. It is agreed that the indemnity agreement contained in this Section 1.7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) Each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify the Company, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder and other stockholder, and

each of their officers, directors, and partners, and each person controlling such Holder or other stockholder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular, or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company and such Holders, other stockholders, directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; provided, however, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and provided that in no event shall any indemnity under this Section 1.7 exceed the gross proceeds from the offering received by such Holder.

(c) Each party entitled to indemnification under this Section 1.7 (the "INDEMNIFIED PARTY") shall give notice to the party required to provide indemnification (the "INDEMNIFYING PARTY") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 1, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 1.7 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall

be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

1.8 INFORMATION BY HOLDER. Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this Section 1. The Company will not be obligated to register the Registrable Securities of any Holder who fails promptly to provide the Company with such information as the Company may reasonably request.

1.9 LIMITATIONS ON SUBSEQUENT REGISTRATION RIGHTS. From and after the date of this Agreement, the Company shall not, without the prior written consent of a majority in interest of the Holders, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are more favorable than the registration rights granted to the Holders hereunder.

1.10 RULE 144 REPORTING. With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements;

(b) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

1.11 TRANSFER OR ASSIGNMENT OF REGISTRATION RIGHTS. The rights to cause the Company to register securities granted to a Holder by the Company under this Section 1 may be transferred or assigned by a Holder only to a transferee or assignee of not less than 39,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for

stock splits, stock dividends, reverse stock splits, and the like), provided that the Company is given written notice at the time of or within a reasonable time after said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are being transferred or assigned, and, provided further, that the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Section 1. Notwithstanding the foregoing, the Rights may be assigned without compliance with the 39,000 share minimum described above to (x) any constituent partner, member (including, without limitation, the HP I Former Equity Holders) or stockholder of a Holder that is a partnership, limited liability company or corporation, (y) a family member of a Holder or trust for the benefit of a Holder, the spouse of a Holder or issue of a Holder or (z) any corporation, partnership, limited liability company or other entity of which at least a seventy-five percent (75%) interest is owned or controlled, directly or indirectly, by a Holder or one or more of the persons described in (x) or (y). Any permitted transferee under this Section 1.11 shall thereupon be deemed to be a "Holder" and an "Investor" hereunder and shall agree in writing to be bound by the terms and conditions of this Agreement, including, without limitation, the share minimum set forth in this Section 1.11.

1.12 "MARKET STAND-OFF" AGREEMENT. If requested by the Company and an underwriter of Common Stock (or other securities) of the Company, each Investor shall not sell or otherwise transfer or dispose of any Common Stock (or other securities) of the Company held by such Investor (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of a registration statement of the Company filed under the Securities Act, provided that: (a) such agreement shall only apply to the first such registration statement of the Company, including securities to be sold on its behalf to the public in an underwritten offering; and (b) all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities are bound by and have entered into similar agreements. The obligations described in this Section 1.12 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in Section 1.1(b) hereof with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred eighty (180) day period. Each Stockholder agrees to execute a market standoff agreement with said underwriters in customary form consistent with the provisions of this Section 1.12.

1.13 ALLOCATION OF REGISTRATION OPPORTUNITIES. In any circumstance in which all of the Registrable Securities and other shares of Common Stock of the Company (including shares of Common Stock issued or issuable upon conversion of shares of any currently unissued series of Preferred Stock of the Company) with registration rights (the "OTHER SHARES") requested to be included in a registration on behalf of the Holders or other selling stockholders cannot be so included as a result of limitations of the aggregate number of shares of Registrable Securities and other shares that may be so included, the number of shares of Registrable Securities and other shares that may be so included shall be allocated among the Holders and other selling stockholders requesting inclusion of shares pro rata on the basis of the number of shares of Registrable Securities and other shares that would be held by such Holders and other selling stockholders, assuming conversion; provided, however, that such allocation shall not operate to

reduce the aggregate number of Registrable Securities and other shares to be included in such registration, if any Holder or other selling stockholder does not request inclusion of the maximum number of shares of Registrable Securities and other shares allocated to him or her pursuant to the above-described procedure, in which case the remaining portion of his allocation shall be reallocated among those requesting Holders and other selling stockholders whose allocations did not satisfy their requests pro rata on the basis of the number of shares of Registrable Securities and other shares which would be held by such Holders and other selling stockholders, assuming conversion, and this procedure shall be repeated until all of the shares of Registrable Securities and other shares which may be included in the registration on behalf of the Holders and other selling stockholders have been so allocated. The Company shall not limit the number of Registrable Securities to be included in a registration pursuant to this Agreement in order to include shares held by stockholders with no registration rights or to include shares of stock issued to founders of the Company or to employees, officers, directors, or consultants pursuant to the Company's 1996 Incentive Stock Option Plan, or in the case of registrations under Sections 1.2 or 1.5 hereof, in order to include in such registration securities registered for the Company's own account.

1.14 DELAY OF REGISTRATION. No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.15 TERMINATION OF REGISTRATION RIGHTS. The right of any Holder to request registration or inclusion in any registration pursuant to Section 1.2, 1.3 or 1.5 shall terminate on the closing of the first registered public offering of Common Stock of the Company, if all shares of Registrable Securities held or entitled to be held upon conversion by such Holder may immediately be sold under Rule 144 during any ninety (90)-day period, or the earlier of (i) such date after the closing of the first registered public offering of Common Stock of the Company as all shares of Registrable Securities held or entitled to be held upon conversion by such Holder may immediately be sold under Rule 144 during any ninety (90)-day period, and (ii) three (3) years after the closing of the first registered public offering.

SECTION 2

INFORMATION COVENANTS OF THE COMPANY

The Company hereby covenants and agrees, as follows:

2.1 BASIC FINANCIAL INFORMATION AND INSPECTION RIGHTS.

(a) Basic Financial Information. In addition to information required to be distributed to some or all Holders pursuant to determinations of the management of the Company or its Board of Directors, the Company will furnish the following reports to each Holder:

(i) within one hundred twenty (120) days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries, if any, as at the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such year, prepared in accordance with generally

accepted accounting principles consistently applied, certified by independent public accountants of recognized national standing selected by the Company.

(ii) within forty-five (45) days after the end of the first, second, and third quarterly accounting periods in each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries, if any, as of the end of each such quarterly period, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such period.

(iii) at least thirty (30) days prior to the beginning of each fiscal year or as otherwise determined by the Board of Directors of the Company, a budget for such fiscal year.

(iv) within forth-five (45) days after the end of each month, or as otherwise determined by the Board of Directors of the Company, an unaudited balance sheet and statements of income and cash flows.

(b) Inspection Rights. The Company will afford to each Holder and to such Holder's accountants and counsel, reasonable access during normal business hours to all of the Company's respective properties, books and records. Each Holder shall have such other access to management and information as is necessary for it to comply with applicable laws and regulations and reporting obligations. The Company shall not be required to disclose details of contracts with or work performed for specific customers and other business partners where to do so would violate confidentiality obligations to those parties. Holders may exercise their rights under this Section 2.1(b) only for purposes reasonably related to their interests under this Agreement and related agreements. The rights granted pursuant to this Section 2.1(b) may not be assigned or otherwise conveyed by the Holders or by any subsequent transferee of any such rights without the prior written consent of the Company except as authorized in this Section 2.1(b).

(c) Qualified Small Business Stock. The Company agrees that for so long as any of the Shares are held by an Investor (or a transferee in whose hands such Shares are eligible to qualify as "qualified small business stock" within the meaning of Section 1202(c) of the Code), it will use best efforts to comply with any applicable filing and reporting requirements of Section 1202 of the Code and any regulations promulgated thereunder; provided, however, that "reasonable efforts" as used in this Section 2.1(b)(ii) shall not be construed to require the Company to operate its business in a manner which would adversely affect its business, limit its future prospects or alter the timing or resource allocation related to its planned operations or financing activities.

2.2 TERMINATION OF COVENANTS. The covenants set forth in this Section 2 shall terminate and be of no further force and effect after the closing of the Company's first firm commitment underwritten public offering registered under the Securities Act.

SECTION 3

RIGHT OF FIRST REFUSAL

3.1 RIGHT OF FIRST REFUSAL TO SIGNIFICANT HOLDERS. The Company hereby grants to each Significant Holder, the right of first refusal to purchase a pro rata share of New Securities (as defined in this Section 3.1) which the Company may, from time to time, propose to sell and issue. A Significant Holder's pro rata share, for purposes of the right of first refusal, is the ratio of the number of shares of Common Stock owned by such Significant Holder immediately prior to the issuance of New Securities, assuming full conversion of the Shares and exercise of any option or warrant held by said Significant Holder, to the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities, assuming full conversion of the Shares and exercise of all outstanding convertible securities, rights, options and warrants to acquire Common Stock of the Company. Each Significant Holder shall have a right of over-allotment such that if any Significant Holder fails to exercise its right hereunder to purchase its pro rata share of New Securities, the other Significant Holders may purchase the non-purchasing Significant Holder's portion on a pro rata basis within ten (10) days from the date such non-purchasing Significant Holder fails to exercise its right hereunder to purchase its pro rata share of New Securities. This right of first refusal shall be subject to the following provisions:

(a) "NEW SECURITIES" shall mean any capital stock (including Common Stock and/or Preferred Stock) of the Company whether now authorized or not, and rights, options or warrants to purchase such capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" does not include:

(i) shares of Common Stock issued or issuable to key employees and other persons (including, without limitation, directors, officers, consultants and scientific collaborators) employed or engaged by the Company pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or arrangements approved by the Board of Directors of the Company, or upon exercise of options or warrants granted to such parties pursuant to any such plan, program or arrangement;

(ii) shares of Common Stock issued or issuable upon the exercise or conversion of options or convertible securities of the Company (including, without limitation, any Preferred Stock);

(iii) shares of Common Stock issued or issuable as a dividend or distribution on the Company's securities or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) of the Third Amended and Restated Certificate of Incorporation of the Company;

(iv) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Company, including the directors which the holders of Series C Preferred Stock are entitled to elect pursuant to paragraph 5(d) of Article IV of the Third Amended and Restated Certificate of Incorporation of the Company; and

(v) shares of Common Stock or Preferred Stock of the Company which are otherwise excluded by the affirmative vote or consent of the holders of a majority of the shares of Series C Preferred Stock then outstanding.

(b) In the event the Company proposes to undertake an issuance of New Securities, it shall give each Significant Holder written notice of its intention, describing the type of New Securities, and the price and the general terms upon which the Company proposes to issue the same. Each Significant Holder shall have ten (10) days after any such notice is mailed or delivered to agree to purchase such Significant Holder's pro rata share of such New Securities (which pro rata share, in the case of HP I, may include up to all of the New Securities) for the price and upon the terms specified in the notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased.

(c) In the event the Holders fail to exercise fully the right of first refusal within said ten (10) day period and after the expiration of the additional ten (10) day period for the exercise of the over-allotment provisions of this Section 3.1, the Company shall have ninety (90) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within ninety (90) days from the date of said agreement) to sell the New Securities respecting which the Significant Holders' right of first refusal option set forth in this Section 3.1 was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in the Company's notice to Significant Holders pursuant to Section 3.1(b). In the event the Company has not sold within such ninety (90) day period or entered into an agreement to sell the New Securities in accordance with the foregoing within sixty (60) days from the date of said agreement, the Company shall not thereafter issue or sell any New Securities, without first again offering such securities to the Significant Holders in the manner provided in Section 2.3(b) above.

(d) The right of first refusal granted under this Agreement shall expire upon, and shall not be applicable to, the first sale of Common Stock of the Company to the public effected pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act, and shall in any event expire on the third anniversary of the date of the Agreement.

(e) The right of first refusal set forth in this Section 3.1 may not be assigned or transferred, except that (i) such right is assignable by each Significant Holder to any wholly owned subsidiary or parent of, or to any corporation or entity that is, within the meaning of the Securities Act, controlling, controlled by or under common control with, any such Significant Holder, and (ii) such right is assignable between and among any of the Significant Holders.

SECTION 4

MISCELLANEOUS

4.1 CERTAIN DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "APPLICABLE PERCENTAGE" shall mean thirty percent (30%) of the Registrable Securities unless HP I is dissolved on or prior to November 30, 2004, in which case from and after the date of such dissolution it shall mean twenty percent (20%) of the Registrable Securities.

(b) COMMISSION" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(c) "COMMON STOCK" shall have the meaning set forth in the recitals hereto.

(d) "EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(e) "EXISTING INVESTORS" shall have the meaning set forth in the preamble hereto.

(f) FORMER HP I EQUITY HOLDERS" shall have the meaning set forth in the recitals hereto.

(g) "HOLDER" shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 1.1 and Section 1.11 hereof.

(h) "HP I" shall have the meaning set forth in the recitals hereto.

(i) "INDEMNIFIED PARTY" shall have the meaning set forth in Section 1.7(c) hereto.

(j) "INDEMNIFYING PARTY" shall have the meaning set forth in Section 1.7(c) hereto.

(k) "INVESTORS" shall mean the Existing Investors, the New Investors and the Former HP I Equity Holders.

(l) "INITIATING HOLDERS" shall mean, as of any date, any Holder or Holders who in the aggregate hold not less than the Applicable Percentage as of such date.

(m) "NEW INVESTORS" shall have the meaning set forth in the recitals hereto.

(n) "NEW SECURITIES" shall have the meaning set forth in Section 3.1(a) hereto.

(o) "OCTOBER 2004 SERIES C TRANSACTION" shall have the meaning set forth in the recitals hereto.

(p) "PREFERRED STOCK" shall mean any Preferred Stock, $0.10 par value, of the Company, issued and outstanding as of the date of this Agreement or issued and outstanding after the date of this Agreement.

(q) "PRIOR RIGHTS AGREEMENT" shall have the meaning set forth in the preamble hereto.

(r) "REGISTRABLE SECURITIES" shall mean (i) shares of Common Stock issued or issuable to a Holder pursuant to the conversion of the Shares and shares of Common Stock issued or issuable to a Holder upon exercise of the Warrants, and (ii) any Common Stock issued as a dividend or other distribution with respect to or in exchange for or in replacement of the shares referenced in (i) above; provided, however, that Registrable Securities shall not include any shares of Common Stock which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor's rights under this Agreement are not assigned.

(s) The terms "REGISTER," "REGISTERED" and "REGISTRATION" shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(t) "REGISTRATION EXPENSES" shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(u) "RESTRICTED SECURITIES" shall mean any Registrable Securities required to bear the first legend set forth in Section 1.1(b) hereof.

(v) "RULE 144" shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(w) "RULE 145" shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(x) "SECURITIES ACT" shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(y) "SELLING EXPENSES" shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities by a Holder and fees and disbursements of counsel for such Holder (other than the fees and disbursements of counsel included in Registration Expenses).

(z) "SERIES B PREFERRED STOCK" shall have the meaning set forth in the recitals hereto.

(aa) "SERIES C PREFERRED STOCK" shall have the meaning set forth in the recitals hereto.

(bb) "SHARES" shall mean the Company's Series B Preferred Stock and Series C Preferred Stock.

(cc) "SIGNIFICANT HOLDERS" shall mean each Holder who owns Shares acquired at an aggregate original purchase price of at least $100,000 unless HP I is dissolved on or prior to November 30, 2004, in which case from and after the date of such dissolution, it shall mean each Holder who owns Shares acquired at an aggregate original purchase price of at least $100,000 and each Former HP I Equity Holder.

(dd) "WARRANT COMMON SHARES" shall have the meaning set forth in the recitals hereto.

(ee) "WARRANT SERIES C SHARES" shall have the meaning set forth in the recitals hereto.

(ff) "WARRANTS" shall have the meaning set forth in the recitals hereto.

4.2 AMENDMENT. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders holding a majority of the Registrable Securities (excluding any of such shares that have been sold to the public or pursuant to Rule 144). Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the operation of this paragraph, the holders of a majority of the Common Stock issued or issuable upon conversion of the Shares and exercise of the Warrants (excluding any of such shares that have been sold to the public or pursuant to Rule 144) will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

4.3 NOTICES. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at such Investor's facsimile number or address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any other holder of any Shares or the underlying Common Stock, at such address or facsimile number as shown in the Company's records, or, until any such holder so furnishes an address or facsimile number, to the Company, then at the address of the last holder of such Shares or underlying Common Stock for which the Company has contact information in its records; or

(c) if to the Company, one copy should be sent to Electro-Optical Sciences, Inc., One Bridge Street, Irvington, NY 10533 or to facsimile number (914)591-3785 and addressed to the attention of the Chief Executive Officer, or at such other address or facsimile number as the Company shall have furnished to the Investors, with a copy to counsel to the Company, to Dreier LLP, 499 Park Avenue, New York, NY 10022 or to facsimile number (212)328-6101 and addressed to the attention of Valerie A. Price, Esq.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid or, if sent by facsimile, upon confirmation of facsimile transfer.

4.4 GOVERNING LAW. This Agreement shall be governed in all respects by the internal laws of the State of New York as applied to agreements entered into among New York residents to be performed entirely within New York, without regard to principles of conflicts of law.

4.5 SUCCESSORS AND ASSIGNS. This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties.

4.6 ENTIRE AGREEMENT. This Agreement and the exhibit hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and supercedes in its entirety the Prior Rights Agreement, which shall have no further force and effect. No party hereto shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein.

4.7 DELAYS OR OMISSIONS. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

4.8 SEVERABILITY. Unless otherwise expressly provided herein, the rights of the Investors hereunder are several rights, not rights jointly held with any of the other Investors. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, and the parties agree to negotiate, in good faith, a legal and enforceable substitute provision which most nearly effects the parties' intent in entering into this Agreement.

4.9 TITLES AND SUBTITLES. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

4.10 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

4.11 TELECOPY EXECUTION AND DELIVERY. A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

4.12 JURISDICTION; VENUE. With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in New York County in the State of New York (or in the event of exclusive federal jurisdiction, the courts of the Southern District of New York).

4.13 JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT.

4.14 FURTHER ASSURANCES. Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

4.15 CONFIDENTIALITY. Anything in this Agreement to the contrary notwithstanding, no Investor by reason of this Agreement shall have access to any trade secrets or classified information of the Company. The Company shall not be required to comply with any information rights of Section 2 in respect of any Investor whom the Company reasonably determines to be a competitor or an officer, employee, director or holder of more than ten percent (10%) of a competitor. Each Investor acknowledges that the information received by them pursuant to this Agreement may be confidential and for its use only, and it will not use such confidential information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than its employees or agents having a need to know the contents of such information, and its attorneys), except in connection with the exercise of rights under this Agreement, unless the Company has made such information available to the public generally or such Investor is required to disclose such information by a governmental authority.

4.16 TERMINATION UPON CHANGE OF CONTROL. This Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Company held by such holders prior to such transactions, at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company.

4.17 NOTICE OF DISSOLUTION OF HP I. Within five (5) business days of the effective date of the dissolution of HP I, the former managing member(s) of HP I shall deliver a written notice to each Significant Investor setting forth the effective date of the dissolution of HP I.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated Investors' Rights Agreement effective as of the day and year first above written.

COMPANY:

ELECTRO-OPTICAL SCIENCES, INC.
a Delaware corporation

By: /s/ JOSEPH V. GULFO
Name: Joseph V. Gulfo
Title: Chief Executive Officer

[Signature Page to Second Amended and Restated Investors' Rights Agreement]

/s/ ROSALYN BINDAY

Rosalyn Binday

/s/ LAWRENCE FIELDS

Lawrence Fields

/s/ ALAN CORNELL

Alan Cornell

CAREMI PARTNERS

By: /s/ MICHELE MCGOVERN

Name: MICHELE MCGOVERN

Title: PRESIDENT

/s/ PATRICIA BRILLIANT

Patricia Brilliant

/S/ STANLEY BRILLIANT

Stanley Brilliant

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

DAVID AND MARJORIE SILVERMAN, AS
TENANTS BY THE ENTIRETY

/s/ DAVID SILVERMAN

David Silverman

/s/ MARJORIE SILVERMAN

Marjorie Silverman

/s/ ERIC DOBKIN

Eric Dobkin

/S/ STEVEN KANTOR

Steven Kantor

/s/ EVAN KANTOR

Evan Kantor

/s/ TODD KANTOR

Todd Kantor

/s/ BRIAN KANTOR

Brian Kantor

/s/ ROBERT MARSTON

Robert Marston

/s/ DAN W. LUFKIN

Dan W. Lufkin

/s/ PHILLIP E. HORTON AND JOANNE B. HORTON

Phillip E. Horton and Joanne B. Horton

CHAFETZ GROUP, LLC

By: /s/ RALPH A. CADMAN

Name: RALPH A. CADMAN

Title: TREASURER

/s/ JERRY JACOB

Jerry Jacob

/s/ MICHAEL FUX

Michael Fux

/s/ UZI ZUCKER

Uzi Zucker

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

NANCY L. FRIEDMAN FAMILY TRUST,
NANCY AND ROBERT FRIEDMAN TRUSTEES

By: /s/ ROBERT FRIEDMAN

Robert Friedman,
Trustee

By: /s/ NANCY L. FRIEDMAN

Nancy L. Friedman,
Trustee

/s/ PETER JOSEPH

Peter Joseph

/s/ SHELDON PERL

Sheldon Perl

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

EXHIBIT A

INVESTORS

1. EXISTING INVESTOR:

a. SERIES B PREFERRED

Series B Preferred Shareholders	Shares of Series B Preferred Stock
Arcadian Venture Partners, LP Attn: George Chryssis	156,000
Double D Venture Fund, LLC Attn: Philip Braginsky	61,538
Peponi, LLC Attn: Arthur G. Koumantzelis	39,000
Peter Matthews	18,461
Estate of Bennett I Moyle c/o Mike Moyle, Executor	15,384
RL Capital Partners Attn: Ronald M. Lazar	11,538
Erik P. Nygaard	9,820
John M Linehan & Rita A Linehan JTWROS	9,231
Pensco Pension Services Cust FBO Edward L. Cameron IRA Rollover	9,230
Brad Snedecor & Mary O'Shaughnessy JTWROS	9,230
General Home Furnishings, Inc. Attn: Alan Cameros	9,230
Salomon Smith Barney Cust FBO Giacomo A. Russo SEP IRA	9,230
John T. Chapman	8,461
Dennis M Murphy & Doris W Murphy JTWROS	8,232
Arvind Deogirikar & Tatiana Deogirikar JTWROS	7,692
Chester Mazur TTEE Chester Mazur Revocable Trust DTD 05/16/2000	7,692
Larry E. DeMar	7,692
Lawrence B Goodman	7,692

Michelle J. Arden & T. Allen Akin JTWROS	7,692
Richard E. Donick	7,692
The High Street Venture Fund LLC King Oehmig & West Oehmig	7,692
John D. McBride Jr.	7,384
Arline E. Greenblatt	6,461
Rajendra K. Mehta & Sadhna Mehta JTWROS	6,153
Peter J. Durfee & Sheila W. Durfee JTWROS	5,423
Philip C. Wennblom	5,386
Donald J Aoki & Peggy J Aoki TTEES The Aoki Family Trust DTD 5/29/1991	5,384
Jeffrey S. Briggs & Diane E. Briggs JTWROS	5,384
Thomas C. Flaherty Jr. & Marije TerEllen JTWROS	5,384
James C Kempner	5,000
James G. Tuton & Sharon R. Tuton JTWROS	4,846
Arun Shah & Shobhana Shah JTWROS	4,615
Avner I. Schwarz & Katy K. Schwarz JTWROS	4,615
Bernard Notas & Eve Roberta Notas TTEES The Notas Family Trust U/A/D 08/13/1997	4,615
Foreman Investment Capital, LLC. Attn: Scott F Zarrow	4,615
Frederick J. Egan	4,615
James B Kilgore	4,615
James M. Kendall	4,615
Kelly H. Burke & Denny H. Burke TTEES The Burke Joint Revocable Trust DTD 7/23/93	4,615
Peter N. Stathis	4,615
Premnath Viswanath & Malathy Viswanath JTWROS	4,615
Sal Barbera	4,615
William P. & Sharon J. Slagle TTEES Slagle 1999 Living Trust DTD 6/23/1999	4,615
Allan H. Zerman & Marilyn R. Zerman JTWROS	4,500

Michael J. Sadowski & Fiona E. MacKellar JTWROS	4,320
Ward A Simonson & Karen A Simonson JTWROS	4,307
Nanda Nandkishore	4,230
Paul C Valentine	4,146
Caribam Resources Inc. Attn: J. Paul Roston	4,130
Alan R. Menzies	4,116
Charles J. Kalina III	4,061
Wilma K. Deutsch	4,038
James C. Greenblatt	4,000
Jonathan P. Nelson	4,000
Antoinette E. Murray	3,846
Antonio Varela & Myriam Varela JTWROS	3,846
Arthur N. Sklaroff & Clara J. Chang-Sklaroff COMM PROP	3,846
Barnegat Bay Investor Group Attn: Alfred B. Nunan	3,846
Barry Lubin	3,846
Bhanu Kapoor	3,846
Bradley J. Christians & Carolyn O. Christians JTWROS	3,846
Carolyn E. Balfour	3,846
Chad C. Warwick	3,846
Chris Elliott	3,846
Clarence G. Lee	3,846
Craig S. Kowalski & Mingjie Kowalski JTWROS	3,846
Curtis K Fisher	3,846
Curtis R Kolcun & M Debora Kolcun TTEES The Curtis Richard Kolcun Revocable Trust DTD 06/07/99	3,846
Daniel W. Berger	3,846
Daniel W. Oehmig	3,846
David B. Weir	3,846
David Gemmer	3,846
Donald E. Eastman	3,846

Eagle Rock Venture Capital Partners, LP Attn: Richard Dreskin, John Dreskin,Ken Disbrow	3,846
Eddie C. Lee & Jenny Ma JTWROS	3,846
Edmund Pickell Ang & Lorna Garcia Ang TTEES The 1993 Edmund Pickell Ang & Lorna Garcia Ang Revocable Trust, DTD 7/31/93	3,846
Ellen Chiang	3,846
Ernest L. Timlin	3,846
Eugene C. Elliott & Cathleen R. Elliott JTWROS	3,846
Eugene J. Tschoepe	3,846
Fred B. Bialek	3,846
Gary W Allen,Judy A Pick, Kay A Williams TTEES Charles Maxwell Allen Testamentary Trust DTD 11/01/96	3,846
George McGee	3,846
Heritage Venture Funds, LLC Attn: Michael W. Devine	3,846
Hillcrest Investors, L.P. Attn: Mr. Jon Goodykoontz	3,846
Hossein Razavi	3,846
James L. Crawford & Anna J. Fang TTEES James L. Crawford 1999 Revocable Trust DTD 04/12/99	3,846
James M Freitag & Suzanne Freitag JTWROS	3,846
James P. Hallberg	3,846
James R. Mark & Ora L. Mark JTWROS	3,846
Janet L. Stodter	3,846
Jeanne M. Rowzee & Patricia J. Elliott JTWROS	3,846
Jian Huang	3,846
Joe Behrendt & Jamie Behrendt TTEES Joe N and Jamie W Behrendt Rev Trust DTD 10/30/96	3,846
John A Forlines Jr	3,846
John A. Forlines III	3,846
John McDonald	3,846
John Penners	3,846
John S Jones & Claudia L Jones COMM PROP	3,846

Jon D. Brinton & Loraine M. Brinton JTWROS	3,846
Jon LeFebvre & Alice L. LeFebvre COMM PROP	3,846
Jon M. Sebaly	3,846
Jonathan P. Patronik	3,846
Jonathan P. Ruppert	3,846
Keith A. McAllister	3,846
Kenn T. Dahl	3,846
Kevin M. Nish & Kimberly M. Nish COMM PROP	3,846
Kurt Marti & Marianne Marti JTWROS	3,846
Lawrence R. Dugan	3,846
Leon M Augusty & Jan R Augusty JTWROS	3,846
Leonard R. Weisberg TTEE The Trust U/A Leonard R. Weisberg DTD 03/16/1994	3,846
Manish J. Moradia	3,846
Mark Lunenburg	3,846
Vanmark Associates Inc. Pension Profit Sharing Plan Mark V Brooks TTEE	3,846
Matthew Oristano	3,846
Mehdi N. Farid	3,846
Michael A. Wolf	3,846
Michael E Liebowitz	3,846
Michael R. Douglas & Catherine H. Benoist JTWROS	3,846
Norman Smothers	3,846
Oliver H Drabkin	3,846
Paul C. Gallo	3,846
Pensco Pension Services Cust FBO Michael McNamara IRA Rollover	3,846
Pensco Pension Services Cust FBO Ronald Lazar IRA	3,846
Pete Geffen	3,846
Peter D. Crist	3,846
Phillip Horton & Joanne Horton JTWROS	3,846

Prabhas K. Kejriwal & Madhulika Kejriwal COMM PROP	3,846
Rima Lieben	3,846
Robert A. Stringer	3,846
Robert P. Marx	3,846
Robert W. Salz TTEE The Robert W. Salz Living Trust DTD 09/22/1998	3,846
Rodney E. & Suzanne M. Thompson TTEES The Thompson Family Living Trust DTD 01/24/1994	3,846
Roger E. Block & Victoria M. Block JTWROS	3,846
Walter A. Rogoff	3,846
Ronald Reiter	3,846
Ross C Kayuha	3,846
Salomon C. Ojalvo & Dorita Ojalvo JTWROS	3,846
Sandeep Abrol	3,846
Stanford R. Joseph	3,846
Stephan L. Sheets	3,846
Tapley O. Johnson III	3,846
Ted R Schenberg	3,846
William A. Stevens	3,846
William J. Hughes	3,846
William L. Walker	3,846
William M. Mitchell	3,846
Ken K Dickinson	1,923
Alexander Goldberg	1,923

b. SERIES C PREFERRED

INVESTOR	SHARES OF SERIES C PREFERRED STOCK	WARRANT COMMON SHARES(1)	WARRANT SERIES C SHARES(2)
Health Partners I	1,150,754	1,150,754	121681
Koji Miyazaki	99,558		24,890
Augusty, Leon & Jan	2,212		
Bialek, Fred	2,212		
Briggs, Jeffrey & Diane	2,212		
Burke, Lt. General Kelly	4,425		
Durfee, Peter	6,637		
Eagle Rock Ventures	2,212		
Hodgson, Rod	22,124		
Kalina, Charles	4,425		
Lerner, Seth	2,212		
Menzies, Alan	2,212		
Murphy, Suzanne	22,124		
Nelson, Jonathan P.	4,425		
Oristano, Matthew	2,212		
Polzer, Eckhard	4,425		
Rabinovitz, Harold	4,425		
Roston, Jay	11,062		
Sebaly, Jon	2,212		
Shah, Arun and Shobhana	2,212		
Snedecor, Brad & O'Shaughnessy	6,637		
Stodter, Janet L.	2,212		
Stringer, Robert A.	11,062		
Timlin, Ernest	2,212		
Tschoepe, Eugene	2,212		
Valentine, Paul	4,425		
Viswanath, Premnath	4,425		
Wennblom, Philip	6,637		
Foreman Capital Group	2,212		

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(1) Warrant Common Shares" means shares of Common Stock issuable upon exercise of warrants to purchase Common Stock issued by the Company.

(2) "Warrant Series C Shares" means shares of Series C Preferred Stock issuable upon exercise of warrants to purchase Series C Preferred Stock issued by the Company.

2. NEW INVESTORS

PURCHASER	SHARES OF SERIES C PREFERRED STOCK	WARRANT COMMON SHARES
Rosalyn Binday	45,000	45,000
Lawrence Fields	44,250	44,250
Alan Cornell	44,248	44,248
Caremi Partners	884,955	884,955
Patricia Brilliant	309,734	309,734
Stanley Brilliant	88,495	88,495
David and Marjorie Silverman, TBE	26,550	26,550
Eric Dobkin	265,486	265,486
Steven Kantor	22,124	22,124
Evan Kantor	11,062	11,062
Todd Kantor	11,062	11,062
Brian Kantor	11,062	11,062
Robert Marston	44,248	44,248
Dan W. Lufkin	100,000	100,000
Phillip E. Horton and Joanne B Horton, JTWROS	6,999	6,999
Chafetz Group, LLC	221,239	221,239
Jerry Jacob	44,247	44,247
Michael Fux	221,238	221,238
Uzi Zucker	88,495	88,495
Nancy L. Friedman Family Trust, Nancy and Robert Friedman Trustees	44,427	44,427
Peter Joseph	132,743	132,743
Sheldon Perl	44,247	44,247
The Leonard Florence 2004 Revocable Trust Perry J. Gould as Trustee	44,247	44,247
Paul Gould	11,000	11,000
Marc Perlman	110,619	110,619
Alan Perlman	110,619	110,619
Alan Fishman	119,469	119,469
Laura Sloate	90,929	90,929
John Simon	15,486	15,486
Mary Cullen	44,248	44,248
Bruce Allen	176,991	176,991
Allen & Company LLC	110,619	110,619

PURCHASER	SHARES OF SERIES C PREFERRED STOCK	WARRANT COMMON SHARES
Edward L. Cameron	22,123	22,123
Adam Zikora	10,000	10,000

3. FORMER HP1 MEMBERS

MEMBERS OF HEALTH PARTNERS I, LLC	SHARES OF SERIES C PREFERRED STOCK	WARRANTS COMMON SHARES	WARRANT SERIES C SHARES
Caremi Partners Ltd.	221,177	221,177	23,387
Eric S. Dobkin	132,682	132,682	14,030
Dan W. Lufkin	110,587	110,587	11,694
Allen & Company LLC	88,608	88,608	9,369
Laura J. Sloate	88,608	88,608	9,369
Patricia Brilliant	44,304	44,304	4,685
Robert J. Friedman, M.D.	44,304	44,304	4,685
Edward R. Heilman, M.D	44,304	44,304	4,685
Steven Kantor, D.D.S.	44,304	44,304	4,685
Robert Marston	44,304	44,304	4,685
David and Marjorie Silverman	44,304	44,304	4,685
John Simon	44,304	44,304	4,685
Charles B. Ortner	44,304	44,304	4,685

MEMBERS OF HEALTH PARTNERS I, LLC	SHARES OF SERIES C PREFERRED STOCK	WARRANTS COMMON SHARES	WARRANT SERIES C SHARES
Abigail Lufkin Trust	27,618	27,618	2,920
Alison Lufkin Trust	27,618	27,618	2,920
Elise Lufkin Living Trust	27,618	27,618	2,920
Margaret L. Bishop Trust	27,618	27,618	2,920
Breaux Castleman	22,094	22,094	2,336
Paul Gould	22,094	22,094	2,336
TOTAL	1,150,754	1,150,754	121,681

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EXHIBIT 10.2

ELECTRO-OPTICAL SCIENCES. INC.
1996 STOCK OPTION PLAN

1. Purpose

The purpose of the 1996 Stock Option Plan (the "Plan") of Electro-Optical Sciences, Inc. (the "Company") is to provide an incentive, in the form of a proprietary interest in the Company, to officers, other key employees, directors and collaborating scientists of the Company who are in a position to contribute materially to the successful operation of the business of the Company, to increase their interest in the Company's welfare, and to assist the Company in attracting and retaining officers, other key employees, directors and collaborating scientists of outstanding abilities.

2. Administration.

The Plan shall be administered by the Board of Directors of the Company (the "Board"). From time to time the Board may grant options to such eligible employees, directors and collaborating scientists with respect to such number of shares of Class B Common Stock of the Company (the "Common Stock") as the Board may determine subject to the terms and conditions of the Plan.

The Board shall have full authority to construe, administer and interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan and to make all other determinations in connection with the Plan and the options granted thereunder as it deems necessary or advisable. All determinations of the Board in the administration of the Plan shall be final.

3. Types of Options.

Options granted under the Plan may be of two types: (a) "incentive stock options" intended to meet the requirements of Section 422A of the Internal Revenue Code of 1986, as amended (the "Code") and (b) "non-qualified stock options". The Board shall have the authority and discretion to grant to an eligible individual either incentive stock options, non-qualified stock options or both, but shall clearly designate the nature of each option at the time of grant.

4. Shares Subject to the Plan.

Subject to adjustment as provided in Section 10, a maximum of 50 shares of Class B Common Stock (the "Option Shares") shall be available for issuance upon the exercise of options granted under the Plan. Option Shares may be authorized and unissued shares, treasury shares or both, as the Board may elect. If any option shall terminate for any reason without having been exercised in full, the unpurchased Option Shares subject thereto shall be available for future grants under the Plan.

5. Eligibility.

Only officers, other key employees and directors of the Company or any subsidiary and key scientists from an institution conducting collaborative research with the Company ("Collaborating Scientists") shall be eligible for the grant of options under the Plan; provided, however, that a prospective key employee of the Company or of any subsidiary shall be eligible for the grant of options under the Plan if such grant is conditioned upon, and effective not earlier than, his or her becoming an employee of the Company or any subsidiary; and, provided further, that a director or a Collaborating Scientist who is not otherwise an employee of the Company shall not be eligible for the grant of an "incentive stock option" unless the Code so permits at the time of the option grant. The term "subsidiary" shall mean any corporation now existing or hereafter organized or acquired (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of option grant, each of the corporations (including the Company) other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

6. Grant of Options.

The Board may, from time to time, grant options to eligible individuals. Except as hereinafter provided, options granted pursuant to the Plan shall be subject to the following terms and conditions:

(a) Price. The exercise price per Option Share shall be established by the Board, provided that the exercise price shall not be less than 100% of the "Fair Market Value" (as hereinafter defined) of the Common Stock at the time the option is granted; and provided, further, that the exercise price for incentive stock options granted to any person who owns, directly or indirectly (within the meaning of sections 422A(b) (6) and 425(d) of the Code), at the time of option grant, over 10% of the total combined voting power of all classes of stock of the Company or of a parent or subsidiary corporation (hereafter a "Control Person") shall be not less than 110% of the Fair Market Value. The "Fair Market Value" shall be the per share price of the Common Stock last paid to the Company by an investor as follows: (i) in a public market, if there has been a public offering of the Common Stock; or (ii) in a private purchase negotiated in arms-length bargaining, adjusted from time to time but not less frequently than annually by the Board acting in good faith, if there has been no public offering of the Common Stock.

(b) Amount of Incentive Stock Options. With respect to incentive stock options granted under the Plan, if the aggregate Fair Market Value (determined as of the time of grant) of the Common Stock subject to incentive stock options granted to any eligible employee under this Plan or any other plan of the Company or any parent or subsidiary corporation which first become exercisable in any calendar year exceeds $100,000, then such incentive stock options, to the extent of such excess, shall be treated for all tax purposes as nonqualified stock options.

(c) Term of Options. The term during which each option may be exercised shall be determined by the Board, but in no event shall an option be exercisable in whole or in part more than ten years from the date it is granted. All rights to purchase pursuant to an option shall,

unless sooner terminated, expire at the date designated by the Board. The Board shall determine the date on which each option shall become exercisable and may provide that an option shall become exercisable in installments. The shares comprising each installment may be purchased in whole or in part at any time after such installment becomes exercisable. The Board may, in its sole discretion, accelerate the time at which any option may be exercised in whole or in part.

(d) Termination of Employment. Except as provided in this Section 6(d), or as may be determined by the Board of Directors in connection with the grant of any non-qualified stock option, at such time when an optionee is no longer an employee, director or Collaborating Scientist of the Company or any subsidiary for any reason, including, without limitation, death, disability, retirement, discharge, layoff or any other voluntary or involuntary termination of an optionee's employment, term as a director or status as a Collaborating Scientist (a "Termination"), the unexercised portion of any outstanding options granted hereunder to such optionee shall immediately terminate and be null and void for all purposes. Upon a Termination as a result of retirement, disability or death, the period during which the options may be exercised shall not exceed: (i) one year from the date of Termination in the case of death, and (ii) three months from the date of Termination in the case of retirement or disability; provided, however, that in no event shall the period extend beyond the expiration of the option term. Subject to the foregoing, in the event of death, such options may be exercised by an optionee's legal representative but only to the extent that installments had accrued as of the date of death. Transfers of employees among the Company and any subsidiaries of the Company shall not be deemed to be Terminations.

7. Stock Option Agreement.

Each option granted under the Plan shall be evidenced by an agreement (the "Stock Option Agreement") which shall be executed by the Company and the optionee. The Stock Option Agreement shall contain such terms and provisions, not inconsistent with the terms of the Plan, as shall be determined by the Board, including (a) a clear designation of whether the option granted thereby is intended to be an incentive stock option or a non-qualified stock option; (b) in the case of incentive stock options, such terms as shall be requisite to cause such options to comply with the provisions of Section 422A of the Code; and (c) such provisions as the Board, upon advice of counsel to the Company, shall deem necessary or appropriate to comply with the requirements of applicable securities laws.

8. Exercise of Options.

Options granted under the Plan shall be exercised by the optionee (or by his or her legal representative, as provided in Section 6(d)) as to all or part of the Option Shares exercisable thereunder, by executing and delivering to the Secretary of the Company a stock purchase agreement in substantially the form of Exhibit A hereto (the "Stock Purchase Agreement"), but subject to the provisions of Section 6 (c) hereof, specifying the number of Option Shares with respect to which the option is being exercised, accompanied by a check payable to the Company in the full amount of the purchase price. The Company shall effect the transfer of the shares so purchased to the optionee (or such other person exercising the option pursuant to Section 6(d) hereof) as soon as practicable, and within a reasonable time thereafter, such transfer shall be

evidenced on the books of the Company. Whenever under the Plan shares of stock are to be delivered upon exercise of a nonqualified stock option, the Company shall be entitled to require as a condition of delivery that the optionee remit or, in appropriate cases, agree to remit when due an amount sufficient to satisfy all federal, state and local withholding tax requirements relating thereto.

A condition of exercising an option and of the obligation of the Company to deliver Option Shares shall be the optionee's execution of the Stock Purchase Agreement, and the "Company's obligation to deliver Option Shares shall be further subject to all applicable laws, rules and regulations and such approvals by governmental agencies as may be deemed appropriate by the Board, including, without limitation, such steps as counsel for the Company shall deem necessary or appropriate to comply with the requirements of applicable securities laws.

9. Transferability of Options.

No option granted under the Plan or any right evidenced thereby shall be transferable by the optionee except that an option may be exercised by an optionee's legal representative, as set forth in Section 6(d) hereof.

10. Certain Corporate Events.

(a) In the event of any change in capitalization that affects the Common Stock of the Company, such as a stock dividend, stock split, subdivision or combination of shares, or in the event that the Company is a party to any merger, consolidation or corporate reorganization under circumstances where the Company is the surviving corporation and does not thereby become a wholly-owned subsidiary of any person, the maximum aggregate number and class of shares subject to the Plan, and the number and class of shares subject to each outstanding option and the option price shall be adjusted by the Board in such manner as the Board in its discretion deems appropriate.

(b) In the event of the dissolution or liquidation of the Company or in the event that the Company is a party to any merger, consolidation or corporate reorganization under circumstances where the Company is not the surviving corporation or thereby becomes a wholly-owned subsidiary of any person or if all or substantially all of the assets of the Company shall be sold or exchanged, all options granted hereunder shall immediately terminate, except to the extent otherwise provided in any plan of dissolution or liquidation adopted by the Company, or any plan of merger, consolidation or reorganization or other plan or agreement to which the Company is a party.

11. No Rights of Shareholders.

The optionee shall not be, and shall not have any of the rights and privileges of, a shareholder of the Company with respect to any option Shares unless and until the option with respect thereto has been exercised and a certificate for such Option Shares has been issued.

12. Amendment and Termination: Effective Date.

Options granted pursuant to this Plan and designated as incentive stock options are intended to qualify as such under Section 422A of the Code and such rules and regulations as may be promulgated thereunder. The Plan may be amended by the Board as it shall deem advisable to ensure such qualification and to conform to any change in the law or regulations applicable thereto, or in any other respect that the Board may deem to be in the best interests of the Company; provided, however, that the Board may not, without the authorization and approval of the shareholders (i) increase the total number of option Shares that may be issued under the Plan except pursuant to Section 10, or (ii) materially modify the eligibility requirements for participation in this Plan. The Board shall have the power to effect any changes in a Stock Option Agreement entered into with any optionee under this Plan, provided such optionee consents to the modification.

The Board may, in its discretion, terminate, or fix a date for the termination of, the Plan. Unless previously terminated, the Plan shall terminate on November 30, 2006, and no options shall be granted under the Plan after such date. Termination shall not affect any options previously granted under the Plan.

The Plan will become effective upon its adoption by the Board; provided, however, that the Plan, and any and all options granted under it, shall be null and void unless proved by the Plan is approved by the shareholders of the Company prior to November 30, 1997.

EXHIBIT 10.3

ELECTRO-OPTICAL SCIENCES, INC.

2003 STOCK INCENTIVE PLAN

1. Purpose. The purpose of the Electro-Optical Sciences, Inc. 2003 Stock Incentive Plan (the "Plan") is to establish a flexible vehicle through which Electro-Optical Sciences, Inc., a Delaware corporation (the "Company"), may offer equity-based compensation incentives to key personnel of the Company and its subsidiaries in order to attract, motivate, reward and retain such personnel and to further align the interests of such personnel with those of the stockholders of the Company.

2. Types of Awards. Awards under the Plan may be in the form of (a) options to purchase shares of the Company's common stock, no par value per share (the "Common Stock") granted pursuant to Section 6 below, including options intended to qualify as "incentive stock options" ("IS Os") within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") and options which do not qualify as ISOs, and (b) stock awards granted pursuant to Section 7 below.

3. Administration.

(a) Committee. The Plan shall be administered by the Board of Directors of the Company (the "Board") or a committee comprised of at least two members thereof appointed by the Board (the committee or the Board, in such capacity, are hereinafter referred to as the "Committee"). To the extent that the Plan is administered by the Board, the Board shall have all of the authority and responsibility granted to the Committee herein. ,

(b) Authority of Committee. Subject to the limitations of the Plan, the Committee, acting in its sole and absolute discretion, shall have full power and authority to (i) select the persons to whom awards shall be made under the Plan, (ii) grant awards to such persons and prescribe the terms and conditions of such awards, (iii) construe, interpret and apply the provisions of the Plan and of any agreement or other instrument evidencing an award granted under the Plan, (iv) prescribe, amend and rescind rules and regulations relating to the Plan, including rules governing its own operations, (v) correct any defect, supply any omission and reconcile any inconsistency in the Plan, (vi) amend any outstanding award in any respect, including, without limitation, to accelerate the time or times at which the award becomes vested or exercisable, (vii) carry out any responsibility or duty specifically reserved to the Committee under the Plan, and (viii) make any and all determinations and interpretations and take such other actions as may be necessary or desirable in order to carry out the provisions, intent and purposes of the Plan. A majority of the members of the Committee shall constitute a quorum. The Committee may act by the vote of a majority of its members present at a meeting at which there is a quorum or by unanimous written consent.

(c) Indemnification. The Company shall indemnify and hold harmless each member of the Committee and any employee or director of the Company to whom any duty or

power relating to the administration or interpretation of the Plan is delegated from and against any loss, cost, liability (including any sum paid in settlement of a claim with the approval of the Board), damage and expense (including legal and other expenses incident thereto) arising out of or incurred in connection with the Plan, unless and except to the extent attributable to such person's fraud or willful misconduct.

4. Share Limitations. Subject to adjustment pursuant to Section 9 below, the maximum number of shares of Common Stock that may be issued under the Plan is the sum of (1) 450,000, and (2) the number of shares remaining available for new awards under the Company's 1996 Incentive Stock Option Plan (collectively, the "Prior Plan") including, without limitation, shares covered by any option outstanding under the Prior Plan which, by reason of the subsequent expiration or cancellation of the option, are not issued under the Prior Plan. In determining the number of shares that remain issuable under the Plan at any time after the date the Plan is adopted, the following shares will be deemed not to have been issued (and will be deemed to remain available for issuance) under the Plan: (i) shares remaining under an award made under this Plan or under an option granted under the Prior Plan that terminates or is canceled without having been exercised or earned in full; (ii) shares subject to an award under this Plan where cash is delivered to the holder of the award in lieu of such shares; (iii) shares of restricted stock awarded under this Plan that are forfeited in accordance with the terms of the applicable award; and (iv) shares that are withheld in order to pay the purchase price of shares acquired upon the exercise of outstanding options granted under the Prior Plan or of awards granted under the Plan or to satisfy the tax withholding obligations associated with such exercise. The number of shares of Common Stock issued in connection with the exercise of an option under the Prior Plan or an award under the Plan will be determined net of any previously-owned shares tendered by the holder of the option or award in payment of the exercise price or of applicable withholding taxes.

5. Eligibility. Awards under the Plan may be made to any present or future directors, officers, employees and other key personnel of the Company or its subsidiaries as the Committee may select.

6. Stock Options. Subject to the provisions of the Plan, the Committee may grant options to eligible personnel upon such terms and conditions as the Committee deems appropriate. The terms and conditions of any option shall be evidenced by a written option agreement or other instrument approved for this purpose by the Committee.

(a) Exercise Price. The exercise price per share of Common Stock covered by an option granted under the Plan may not be less than the par value of the Common Stock, provided that the exercise price per share of Common Stock covered by an ISO may not be less than the Fair Market Value (as defined below) per share of the Common Stock at the time of grant (or, in the case of an ISO granted to an optionee who, at the time the option is granted, owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or a "subsidiary" of the Company within the meaning of Section 424 of the Code, 110% of the Fair Market Value per share).

(b) Option Term. No option granted under the Plan may be exercisable (if at all) more than ten years after the date the option is granted (or, in the case of an ISO granted to a ten percent stockholder described in Section 422 of the Code, five years).

(c) Vesting and Exercise of Options. The Committee may establish such vesting and other conditions and restrictions on the exercise of an option and/or upon the issuance of Common Stock in connection with the exercise of an option as it deems appropriate. Subject to satisfaction of applicable withholding requirements, once vested and exercisable, an option may be exercised by transmitting to the Company: (i) a notice specifying the number of shares to be purchased, and (ii) payment of the exercise price. The Committee, acting in its sole discretion, may permit the exercise price to be paid in whole or in part in cash or by check, by means of a cashless exercise procedure to the extent permitted by law, in the form of unrestricted shares of Common Stock (to the extent of the Fair Market Value thereof) or, subject to applicable law, by any other form of consideration deemed appropriate. In addition, the Committee may permit optionees to elect to defer the delivery of shares representing the profit upon exercise of an option, subject to such terms, conditions and restrictions as the Committee may specify.

(d) Rights as a Stockholder. No shares of Common Stock shall be issued in respect of the exercise of an option until full payment of the exercise price and the applicable tax withholding obligation with respect to such exercise has been made or provided for. The holder of an option shall have no rights as a stockholder with respect to any shares covered by the option until the option is validly exercised, the exercise price is paid fully and applicable withholding obligations are satisfied.

(e) Termination of Employment or other Service. Unless otherwise determined by the Committee at grant or, if no rights of the optionee are thereby reduced, thereafter, and subject to earlier termination in accordance with the provisions hereof, the following rules apply with regard to options held by an optionee at the time of his or her termination of employment or other service with the Company and its subsidiaries.

(i) Termination by Reason of Death or Disability. If an optionee's employment or other service terminates by reason of death or Disability (as defined below), then (1) any portion of an option held by the optionee which is not then exercisable shall thereupon terminate, and (2) any portion of an option held by the optionee which is then exercisable shall remain exercisable by the optionee (or beneficiary) for a period of one year following such termination of employment or other service or, if sooner, until the expiration of the term of the option, and, to the extent not exercised within such period, shall thereupon terminate. For purposes of the Plan, the term Disability shall mean, unless the Committee determines otherwise at the time of grant, the inability of a person to perform the essential functions of his or her position, with or without reasonable accommodation, by reason of a physical or mental incapacity or illness which is expected to result in death or to be of indefinite duration.

(ii) Termination for Cause. If an optionee's employment or other service is terminated by the Company or any of its subsidiaries for Cause (as defined below), then any option held by the optionee, whether or not then exercisable, shall immediately terminate and cease to be exercisable. For purposes of the Plan, a termination for "Cause" means (1) in the case where there is no employment, consulting or similar service agreement between the optionee and the Company or any of its subsidiaries or where such an agreement exists but does not define "cause" (or words of like import), a termination classified by the Company or any of its subsidiaries, as a termination due to the optionee's dishonesty, fraud, insubordination, willful misconduct, refusal to perform services or materially unsatisfactory performance of duties, or (2) in the case where there is an employment, consulting or similar service agreement between the optionee and the Company or any of its subsidiaries that defines "cause" (or words of like

import), a termination that is or would be deemed for "cause" (or words of like import) under such agreement.

(iii) Other Termination. If an optionee's employment or other service terminates for any reason (other than death, Disability or Cause) or no reason, then (1) any portion of an option held by the optionee which is not then exercisable shall thereupon terminate, and (2) any portion of an option held by the optionee which is then exercisable shall remain exercisable during the ninety (90) day period following such termination or, if sooner, until the expiration of the term of the option and, to the extent not exercised within such period, shall thereupon terminate.

(f) Nontransferability. No option shall be assignable or transferable except upon the optionee's death to a beneficiary designated by the optionee in a manner prescribed or approved for this purpose by the Committee or, if no designated beneficiary shall survive the optionee, pursuant to the optionee's will or by the laws of descent and distribution. During an optionee's lifetime, options may be exercised only by the optionee or the optionee's guardian or legal representative. Notwithstanding the foregoing, the Committee may permit the inter vivos transfer of an optionee's options (other than options designated as ISOs) by gift to such persons and on such terms and conditions as the Committee deems appropriate.

7. Stock Awards. Subject to the provisions of the Plan, the Committee may grant stock awards to eligible personnel upon such terms and conditions as the Committee deems appropriate. The terms and conditions of any stock award shall be evidenced by a written stock award agreement or other instrument approved for this purpose by the Committee. A stock award may take the form of the issuance and transfer to the recipient of shares of Common Stock or a grant of stock units representing a right to receive shares of Common Stock in the future and, in either case, may be subject to designated vesting conditions and transfer restrictions.

(a) Purchase Price. The purchase price payable for shares of Common Stock transferred pursuant to a stock award must be at least equal to their par value, unless other lawful consideration is received by the Company for the issuance of the shares or treasury shares are delivered in connection with the award.

(b) Stock Certificates for Non-Vested Stock. Shares of Common Stock issued pursuant to a non-vested stock award may be evidenced by book entries on the Company's stock transfer records pending satisfaction of the applicable vesting conditions. If a stock certificate for shares is issued before the stock award vests, the certificate will bear an appropriate legend to reflect the nature of the conditions and restrictions applicable to the shares, and the Company may require that any or all such stock certificates be held in custody by the Company until the applicable conditions are satisfied and other restrictions lapse. The Committee may establish such other conditions as it deems appropriate in connection with the issuance of certificates for shares issued pursuant to non-vested stock awards, including, without limitation, a requirement that the recipient deliver a duly signed stock power, endorsed in blank, for the shares covered by the award.

(c) Stock Certificates for Vested Stock. The recipient of a vested stock award will be entitled to receive a certificate, free and clear of conditions and restrictions (except as may be imposed in order to comply with applicable law or the terms of any stockholders'

agreement), for vested shares covered by the award, subject, however, to the payment or satisfaction of withholding tax obligations in accordance with Section 10. The delivery of vested shares covered by an award of stock units may be deferred if and to the extent provided by the terms of the award or directed by the Committee.

(d) Rights as a Stockholder. Unless otherwise determined by the Committee, (i) the recipient of a stock award will be entitled to receive dividend payments, if any (or, in the case of an award of stock units, dividend equivalent payments), on or with respect to the shares that remain covered by the award (which the Committee may specify are payable on a deferred basis and are forfeitable to the same extent as the underlying award), (ii) the recipient of a non-vested stock award may exercise voting rights if and to the extent that shares of Common Stock have been issued to him pursuant to the award, and (iii) the recipient will have no other rights as a stockholder with respect to such shares unless and until the shares are issued to him free of all conditions and restrictions under the Plan.

(e) Termination of Employment or other Service Before Vesting; Forfeiture. Unless the Committee determines otherwise, a non-vested stock award will be forfeited upon the termination of a recipient's employment or other service with the Company and its subsidiaries. If a non-vested stock award is forfeited, any certificate representing shares subject to such award will be canceled on the books of the Company and the recipient will be entitled to receive from the Company an amount equal to any cash purchase price paid by him for such shares. If an award of stock units is forfeited, the recipient will have no further right to receive the shares of Common Stock represented by such units.

(f) Nontransferability. With respect to any stock award, unless and until all applicable vesting conditions, if any, are satisfied and vested shares are issued, neither the stock award nor any shares of Common Stock issued pursuant to the award may be sold, assigned, transferred, disposed of, pledged or otherwise hypothecated other than to the Company in accordance with the terms of the award or the Plan. Any attempt to do any of the foregoing before such time shall be null and void and, unless the Committee determines otherwise, shall result in the immediate forfeiture of the shares or the award, as the case may be.

8. Fair Market Value. For purposes of the Plan, the Fair Market Value of a share of Common Stock, as of any date shall mean, unless otherwise required by other applicable law, the closing sale price per share of Common Stock as published by the principal national securities exchange on which the Common Stock is traded on such date or, if there is no sale of Common Stock on such date, the average of the bid and asked prices on such exchange at the close of trading on such date, or if shares of the Common Stock are not listed on a national securities exchange on such date, the closing price or, if none, the average of the bid and asked prices in the over-the-counter market at the close of trading on such date, or if the Common Stock is not traded on a national securities exchange or the over-the-counter market, the value of a share of the Common Stock on such date as determined in good faith by the Committee.

9. Capital Changes; Acquisition Events.

(a) Capital Changes. The maximum number and class of shares that may be issued under the Plan, the number and class of shares covered by each outstanding award and, if applicable, the exercise price per share shall all be adjusted proportionately or as otherwise appropriate to reflect any increase or decrease in the number of issued shares of Common Stock

resulting from a split-up or consolidation of shares or any like capital adjustment, or the payment of any stock dividend, and/or to reflect a change in the character or class of shares covered by the Plan arising from a readjustment or recapitalization of the Company's capital stock.

(b) Acquisition Events. In the event of a merger, consolidation, mandatory share exchange or other similar business combination of the Company with or into any other entity ("Successor Entity") or any transaction in which a Successor Entity acquires all the issued and outstanding capital stock of the Company, or all or substantially all the assets of the Company (each, an "Acquisition Event"), outstanding options may be assumed or an equivalent option may be substituted by the Successor Entity or a parent of the Successor Entity. If and to the extent that outstanding options are not assumed or replaced with substantially equivalent options in connection with an Acquisition Event, then each optionee shall have the right to exercise in full all of his or her outstanding options, whether or not such options are otherwise vested or exercisable, but contingent upon the occurrence of the Acquisition Event, for a period of at least twenty (20) days prior to the consummation of the Acquisition Event, in which case the Company shall notify the optionee in writing or electronically that his or her options shall become fully exercisable at least thirty (30) days prior to the consummation of the Acquisition Event, and any outstanding options which are not exercised prior to the consummation of the Acquisition Event shall thereupon terminate. Notwithstanding the preceding sentence, if and to the extent outstanding options are not assumed or replaced with substantially equivalent options in connection with an Acquisition Event, the Committee, acting in its sole discretion and without the consent of any optionee, may provide for the cancellation of any outstanding options in exchange for payment in cash or other property of the Fair Market Value of the shares of Common Stock covered by such options (whether or not otherwise vested or exercisable), reduced by the exercise price thereof (and any applicable withholdings thereon). The Committee, acting in its sole discretion, may accelerate vesting of non-vested stock awards, provide for cash settlement and/or make such other adjustments to the terms of any outstanding stock award as it deems appropriate in the context of an Acquisition Event.

(c) Fractional Shares. In the event of any adjustment in the number of shares covered by any option pursuant to the provisions hereof, any fractional shares resulting from such adjustment shall be disregarded, and each such option shall cover only the number of full shares resulting from the adjustment.

(d) Determinations Final. All adjustments under this Section 9 shall be made by the Committee, and its determination as to what adjustments shall be made, and the extent thereof, shall be final, binding and conclusive.

10. Tax Withholding. As a condition to the exercise of any award or the delivery of any shares of Common Stock pursuant to any award or the lapse of restrictions on any award, or in connection with any other event that gives rise to a federal or other governmental tax withholding obligation on the part of the Company or any of its subsidiaries relating to an award (including, without limitation, an income tax deferral arrangement pursuant to which employment tax is payable currently), the Company and/or the subsidiary may (a) deduct or withhold (or cause to be deducted or withheld) from any payment or distribution to an award recipient whether or not pursuant to the Plan or (b) require the recipient to remit cash (through payroll deduction or otherwise), in each case in an amount sufficient in the opinion of the Company to satisfy such withholding obligation. If the event giving rise to the withholding obligation involves a transfer of shares of Common Stock, then, at the sole discretion of the

Committee, the recipient may satisfy the withholding obligation described under this Section by electing to have the Company withhold shares of Common Stock or by tendering previously-owned shares of Common Stock, in each case having a fair market value equal to the amount of tax to be withheld (or by any other mechanism as may be required or appropriate to conform with local tax and other rules); provided, however, that no shares may be withheld if and to the extent that such withholding would result in the recognition of additional accounting expense by the Company.

11. Amendment and Termination. The Board may amend or terminate the Plan, provided, however, that no such action may adversely affect the rights of the holder of any outstanding award in a material way without the consent of the holder. Except as otherwise provided in Section 9, any amendment which would increase the number of shares of Common Stock which may be issued under the Plan or modify the class of persons eligible to receive awards under the Plan shall be subject to the approval of the Company's stockholders if and to the extent that such approval is necessary or desirable to comply with applicable law or exchange or listing requirements. The Committee may amend the terms of any agreement or certificate made or issued hereunder at any time and from time to time, provided, however, that any amendment which would adversely affect the rights of the holder in a material way may not be made without his or her consent.

12. No Rights Conferred. Nothing contained in the Plan or in any award agreement shall confer upon any recipient of an award any right with respect to the continuation of his employment or other service with the Company or its subsidiaries or interfere in any way with the right of the Company and its subsidiaries at any time to terminate such employment or other service or to increase or decrease, or otherwise adjust, the other terms and conditions of the recipient's employment or other service.

13. Compliance with Law. The Company will not be obligated to issue or deliver shares of Common Stock pursuant to the Plan unless the issuance and delivery of such shares complies with applicable law, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the requirements of any stock exchange or market upon which the Common Stock may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

14. Transfer Orders; Placement of Legends. All certificates for shares of Common Stock delivered under the Plan shall be subject to such stock-transfer orders and other restrictions as the Company may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange or market upon which the Common Stock may then be listed, and any applicable federal or state securities law. The Company may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

15. Decisions and Determinations to be Final. All decisions and determinations made by the Board pursuant to the provisions hereof and, except to the extent rights or powers under the Plan are reserved specifically to the discretion of the Board, all decisions and determinations of the Committee shall be final, binding and conclusive.

16. Governing Law. All rights and obligations under the Plan and each award agreement or instrument shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflict of laws.

17. Term of the Plan. The Plan shall become effective on the date of its adoption by the Board, subject to the approval of the Company's stockholders within 12 months of such date. Unless sooner terminated by the Board, the Plan shall terminate on the tenth anniversary of the date of its adoption by the Board. The rights of any person with respect to an award granted under the Plan that is outstanding at the time of the termination of the Plan shall not be affected solely by reason of the termination of the Plan and shall continue in accordance with the terms of the award (as then in effect or thereafter amended) and the Plan.

18. Related Agreements: Lock-Up.

(a) As a condition to the issuance of shares of Common Stock pursuant to a stock award or upon exercise of an option granted pursuant to the Plan, the recipient shall, at the request of the Board, be required to become a party to any stockholders' or similar agreement(s) to which the Company and some or all of its stockholders may from time to time be party.

(b) As a condition to the issuance of shares of Common Stock pursuant to a stock award or upon exercise of an option granted pursuant to the Plan, the recipient shall, at the request of the Board, agree that he or she will not, without the prior written consent of the managing underwriter, if any, for any public offering of the Company's securities, during the period commencing. on the date of the final prospectus relating to such public offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days), (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the recipient or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the securities of the recipient (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

Exhibit 10.3

EXECUTION COPY

AMENDMENT
TO
ELECTRO-OPTICAL SCIENCES, INC.
2003 STOCK INCENTIVE PLAN

This Amendment to Electro-Optical Sciences, Inc. 2003 Stock Incentive Plan (the "Existing 2003 Plan") is dated this 10 of February 2004.

RECITALS

WHEREAS, the Executive Committee of the Board of Directors (the "Executive Committee") of Electro-Optical Sciences, Inc. (the "Company") has adopted and approved this Amendment (the "Amendment") to the Existing 2003 Plan;

WHEREAS, the Executive Committee has determined that it is in the best interests of the Company and stockholders of the Company to adopt and approve the Amendment; and

WHEREAS, the Executive Committee has recommended that the stockholders of the Company adopt and approve the Amendment.

NOW, THEREFORE, the Existing 2003 Plan is hereby amended as follows:

1. Section 1 of the Existing 2003 Plan is hereby deleted in its entirety and replaced with the following:

"1. Purpose. The purpose of the Electro-Optical Sciences, Inc. 2003 Stock Incentive Plan (the "Plan") is to establish a flexible vehicle through which Electro-Optical Sciences, Inc. (the "Company"), may offer equity-based compensation incentives to key employees and other persons (including, without limitation, directors, officers, consultants and scientific collaborators) employed or engaged by the Company and/or its subsidiaries (collectively, "Eligible Persons") to attract, motivate, reward and retain such Eligible Persons and to further align the interests of such Eligible Persons with those of the stockholders of the Company."

2. Section 3(b) of the Existing 2003 Plan is hereby amended by:

(a) Deleting the phrase "full power and authority to" and replacing it with "full power and authority to administer the Plan, including, without limitation, the power to."

(b) Deleting clause (v) thereof in its entirety and replacing with it the following: "(v) amend the Plan in any respect, including,

without limitation, to correct any defect, supply any omission and reconcile any inconsistency in the Plan,".

3. Section 4 of the Existing 2003 Plan is hereby deleted in its entirety and replaced with the following:

"4. Share Limitations. Subject to the adjustment pursuant to Section 9 below, the maximum number of shares of Common Stock that may be issued under the Plan is 1,500,000. In determining the number of shares that remain issuable under the Plan at any time after the date the Plan is adopted, the following shares will be deemed not to have been issued (and will be deemed to remain available for issuance) under the Plan: (i) shares remaining under an award made under the Plan that terminates or is canceled without having been exercised or earned in full; (ii) shares subject to an award under the Plan where cash is delivered to the holder of the award in lieu of such shares; (iii) shares of restricted stock awarded under the Plan that are forfeited in accordance with the terms of the applicable award; and (iv) shares that are withheld in order to pay the purchase price of shares acquired upon the exercise of awards granted under the Plan or to satisfy the tax withholding obligations associated with such exercise. The number of shares of Common Stock issued in connection with an award under the Plan will be determined net of any previously-owned shares tendered by the holder of the award in payment of the exercise price or of applicable withholding taxes."

4. Section 5 of the Existing 2003 Plan is hereby deleted in its entirety and replaced with the following: "5. Eligibility. Awards under the Plan may be made to any Eligible Person as the Board or Committee may select."

The undersigned, in his capacity as Secretary of the Company, hereby certifies that the Amendment was adopted by the Executive Committee by a Unanimous Written Consent in Lieu of a Meeting dated February 10, 2004.

Name: /s/ William R. Bronner
Title: Secretary
Date: February 10, 2004.

EMPLOYMENT AGREEMENT

This Employment Agreement is made effective as of the 5th day of January, 2004 by and between ELECTRO-OPTICAL SCIENCES, INC., a Delaware corporation (the "Corporation"), and JOSEPH V. GULFO (the "Employee").

WHEREAS, the Corporation desires to employ the Employee in an executive capacity and to be assured of his services as such on the terms and conditions hereinafter set forth; and

WHEREAS, the Employee is willing to accept such employment on such terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Corporation and the Employee hereby agree as follows:

Section 1. Employment. The Corporation hereby employs the Employee, and the Employee hereby accepts employment, as President and Chief Executive Officer of the Corporation. Within 180 days after the date hereof the Employee shall be appointed to, and serve during the term of his employment hereunder as a member of, the Board of Directors of the Corporation and the Executive Committee thereof. Prior to his appointment to the Board of Directors and the Executive Committee thereof, the Employee shall have the right to attend all meetings of the Board of Directors and the Executive Committee thereof and the Corporation shall provide the Employee with all notices and information with respect to such meetings as are provided to Directors of the Corporation. In addition, the Corporation shall, within 24 hours after the taking of any written action by the Board of Directors or the Executive Committee thereof in lieu of a meeting thereof, notify the Employee of the taking of such action.

Section 2. Duties. During the term of the Employee's employment hereunder, the Employee shall perform such duties and responsibilities as are provided in the Corporation's bylaws, as are of such a nature usually associated with his title and position, and as the Board of Directors shall determine from time to time. The Employee shall report directly to the Board of Directors of the Corporation and any authorized committee thereof (collectively, the "Board"). All officers of the Corporation other than the Chairman of the Board shall report directly to the Employee. The Employee shall faithfully and diligently discharge his duties hereunder to the reasonable satisfaction of the Board and use his best efforts to implement the policies established by the Board.

Section 3. Extent of Services. The Employee shall devote substantially all of his business time, attention, and efforts to the performance of his duties hereunder. The Employee shall not, directly or indirectly, as owner, partner, joint venture, stockholder, employee, corporate officer or director, engage or become financially interested in, or be concerned with any other

business activities, duties or pursuits except with the prior written consent of the Board. The foregoing notwithstanding, the Employee may spend up to 8 hours per month providing to third parties consulting services that are not in violation of Section 8(c) hereof and shall be permitted to devote reasonable periods of time to the management of his passive investments, provided that the time devoted to such investments shall not be permitted to interfere with the responsibilities of the Employee hereunder.

Section 4. Location. The Employee shall perform his duties hereunder at the Corporation's principal offices, currently located in Irvington, New York, with travel to such other places and at such times as the needs of the Corporation may from time-to-time dictate or be desirable; provided, however, that after the three-month period following commencement of the Employee's employment hereunder, the Employee shall be permitted to render his duties from his home in Wilmington, DE on Fridays. The Employee shall be permitted to commute from his home in Wilmington, DE to the Corporation's principal offices, provided that, the Employee shall be required to spend at least three (3) weeknights per week at a hotel or residence in the New York area at his expense, subject to the reimbursement obligations set forth in Section 6(c) hereof.

Section 5. Term. Unless the employment of the Employee is sooner terminated pursuant to Section 7 hereof, the term of this Agreement shall be effective for the period commencing as of January 5, 2004 (the "Effective Date") and ending on December 31, 2005 (the "Initial Term"); provided, however that the Initial Term shall be automatically extended for successive one year periods (each such one year period being hereinafter referred to as a "Renewal Term") unless either party provides written notice to the other party at least ninety (90) days prior to the end of the Initial Term or Renewal Term, as the case may be, of its election to terminate this Agreement at the end of the Initial Term or the then current Renewal Term, as the case may be. The Initial Term and any Renewal Term shall hereinafter together be referred to as the "Term."

Section 6. Compensation.

(a) Base Salary. Subject to the terms of this Agreement, and unless the employment of the Employee is sooner terminated pursuant to Section 7 hereof, as basic compensation for his services hereunder, the Corporation shall pay the Employee a base salary of $175,000 per year ("Base Salary"). The Base Salary shall be periodically reviewed by the Board and may be increased by the Board in its discretion based upon the Employee's performance; provided, however that the Board shall be required to review and increase the Employee's Base Salary to an amount to be determined within thirty (30) days if, at any time after the Effective Date, the Corporation shall consummate a sale of its equity securities in which it raises gross proceeds of at least $5 million from the sale of such securities to unaffiliated third party investors. The Base Salary shall be payable in accordance with the Corporation's customary payroll policies and procedures and shall be subject to applicable withholding of income taxes, social security taxes and other such other payroll deductions as are required by law or applicable employee benefit programs.

(b) Other Compensation and Benefits. In addition to the Base Salary, subject to the terms of this Agreement, and unless the employment of the Employee hereunder is sooner terminated pursuant to Section 7 hereof, the Employee shall be entitled to the following additional compensation and benefits:

(i) Stock Options. Subject to applicable stockholder approval, the Employee shall be entitled to receive stock options, issued under the Corporation's 2003 Stock Incentive Plan and pursuant to Stock Option Agreements substantially in the form attached hereto as Exhibit A, to purchase shares of the Corporation's common stock at a per share exercise price equal to the market value of such stock as determined by the Board on the date of grant as follows:

(A) as soon as practicable following the date hereof a stock option shall be granted to the Employee to purchase 150,454 shares of the Corporation's common stock, which is equal to two percent (2%) of the Corporation's outstanding equity securities on a fully-diluted basis as of the date hereof (assuming conversion of all outstanding shares of preferred stock and exercise of all outstanding warrants and options) (the "Signing Option Shares"), which shall vest as follows: the option to purchase up to 50% of the Signing Option Shares shall vest immediately upon issuance of the stock option and the option to purchase the remaining 50% of the Signing Option Shares shall vest quarterly in four (4) equal installments over a one year period commencing on the Effective Date;

(B) as soon as practicable following the date hereof a stock option shall be granted to the Employee to purchase 13,053 shares of the Corporation's common stock (such shares collectively referred to herein as the "January Option Shares"), which shall vest as follows: the option to purchase up to 50% of the January Option Shares shall vest immediately upon issuance of the stock option and the option to purchase the remaining 50% of the January Option Shares shall vest quarterly in four (4) equal installments over a one year period commencing on the Effective Date; and

(C) as soon as practicable following the date hereof a stock option shall be granted to the Employee to purchase up to that number of shares of the Corporation's common stock which, when combined with the Signing Option Shares and the January Option Shares, will be equal to four percent (4%) of the Corporation's outstanding equity securities on a fully-diluted basis (as described above) calculated as of the date on which FDA Approval (as hereinafter defined) is obtained (the "Approval Option Shares") which shall vest as follows: the option to purchase up to 50% of the Approval Option Shares shall vest immediately upon FDA Approval and the option to purchase the remaining 50% of the Approval Option Shares shall vest quarterly in four (4) equal installments over a one year period commencing on the date on which FDA Approval is obtained. For purposes hereof, the term "FDA Approval" shall mean receipt by the Corporation of written approval from the United States Food and Drug Administration without limitations or exceptions of the Corporation's MelaFind(TM) modular PreMarket Approval Application Shell Number M020024.

The Corporation shall use its best efforts to obtain stockholder approval of an increase in the number of shares of the Corporation's common stock for which options may be issued under its stock option plans within 90 days after the Effective Date.

(ii) Performance Compensation. The Employee may receive a discretionary bonus after the end of each of the Corporation's fiscal years, based upon an annual performance review, or at any other time in the sole discretion of the Board, which bonus shall be subject to such payroll deductions as are required by law or applicable employee benefit programs (a "Discretionary Bonus"). The target for such Discretionary Bonus shall be an amount equal to at least fifty percent (50%) of the Employee's then current Base Salary.

(iii) Benefits; Vacation. The Employee shall be entitled to participate in and receive benefits under all benefit plans which the Corporation from time to time makes available to its senior management employees, but the Corporation shall not be obligated to establish or maintain any such plan. The Employee shall be entitled to four weeks vacation per calendar year, which vacation time shall accrue on a pro-rata basis during the calendar year. Any vacation time which is not used may not be carried from year to year, and the Employee shall not be entitled to compensation for any vacation days which are unused at the end of any such calendar year.

(c) Expenses. The Corporation shall reimburse the Employee for all reasonable and necessary out-of-pocket expenses, including standard and economical business travel expenses, incurred by the Employee in fulfilling his duties hereunder, subject to such limitations and restrictions as may be set by the Board from time to time in its discretion. In addition, the Corporation shall reimburse the Employee for the following expenses: (i) economical travel expenses incidental to the Employee's commute to the Corporation's principal office in Irvington, New York from Wilmington, Delaware in an aggregate amount not to exceed $1,100 per month, consisting of an unlimited Amtrak unreserved pass, a MetroNorth RailPass, NYC Subway transportation, and monthly car parking; (ii) economical lodging expenses incidental to the Employee's commute consisting of expenses for extended-stay lodging for the first three months of the Employee's employment hereunder and thereafter $2000 per month (the "Stipend") in lodging expenses; and (iii) economical communication expenses consisting of expenses for one cellular phone line, one phone line at the Employee's home office and cable broadband internet service at the Employee's home office. The Corporation's reimbursement obligations hereunder for any expense other than the Stipend shall be conditioned upon presentation by the Employee of an itemized account of such expense, consistent with the policies and procedures established by Board, together with such receipts or other evidence as the Corporation shall require for tax or accounting purposes.

Section 7. Termination. Notwithstanding the provisions of Section 5 hereof:

(a) For Cause. The Corporation may terminate the Employee's employment at any time "for cause" with immediate effect upon delivering written notice to the Employee. For purposes of this Agreement, "for cause" shall mean: (i) an act of fraud, misappropriation of funds or embezzlement by the Employee; (ii) a breach by the Employee of a fiduciary responsibility owing to the Corporation or any of its affiliates; (iii) a habitual failure by the Employee to report to work or perform his duties other than as contemplated by Section 4 hereof after written notice of such failure and failure to cure within ten (10) business days of such notice;; (iv) the Employee's failure to perform such duties as are reasonably delegated or assigned to the Employee after written notice of such failure and failure to cure within ten (10)

business days of such notice; (v) the Employee's conviction of any felony or crime; or (vi) the Employee's material breach of his obligations hereunder and/or under the Corporation's Nondisclosure Agreement (as defined below). Upon termination for cause, the Corporation's sole and exclusive obligation will be to pay the Employee his Base Salary earned but not yet paid through the date of termination, reimbursable expenses (as determined in accordance with Section 6(c) hereof) incurred but not yet reimbursed through the date of termination and any vacation accrued but not yet used through the date of termination. Termination pursuant to this Section 7(a) shall in no way abrogate or relieve the Employee of any of his obligations pursuant to Section 8 herein.

(b) Upon Death. In the event of the Employee's death during the Term, the Corporation's sole and exclusive obligation will be to pay to the Employee's spouse, if living, or to his estate, if his spouse is not then living, the Base Salary earned but not yet paid through the date of death, reimbursable expenses (as determined in accordance in Section 6(c) hereof) incurred but not yet reimbursed through the date of death and any vacation accrued but not yet used through the date of termination.

(c) Upon Disability. The Corporation may terminate the Employee's employment upon the Employee's total disability. The Employee shall be deemed to be totally disabled if he refuses, is unable or has failed to perform his duties under this Agreement by reason of mental or physical illness or impairment, for a period of thirty (30) consecutive days or a total of sixty (60) days in any twelve month period. In the event of any disagreement between the Employee and the Corporation as to whether the Employee is totally disabled so as to permit the Corporation to terminate the employment of the Employee pursuant to this Section 7(c), the question of such total disability shall be submitted to an impartial and reputable physician selected by mutual agreement of the Corporation and the Employee or, failing such agreement, selected by two physicians (one of which shall be selected by the Corporation and the other by the Employee), and the determination of the question of such total disability by such physician shall be final and binding on the Corporation and the Employee. Upon termination by reason of the Employee's disability, the Corporation's sole and exclusive obligation will be to pay the Employee his Base Salary earned but not yet paid through the date of termination, reimbursable expenses (as determined in accordance with Section 6(c) hereof) incurred but not yet reimbursed through the date of termination and any vacation accrued but not yet used through the date of termination.

(d) Without Cause. The Corporation may terminate the Employee's employment without cause at any time during the Term. Subject to the provisions of this subsection, upon such a termination without cause the vesting of the stock options previously awarded to the Employee pursuant to Section 6(b)(i)(A) hereof shall be accelerated so that they become immediately fully exercisable and the Corporation's sole and exclusive obligation to the Employee other than the aforedescribed acceleration of option vesting is to pay the Employee (i) his Base Salary earned and any Discretionary Bonus declared by the Board and earned but not yet paid through the date of termination, (ii) an amount equal to his then current Base Salary for a period of fifteen (15) months, (iii) if the Employee is covered by the Corporation's healthcare policy at the time of termination, the cost of COBRA to continue such healthcare, in each case for a period of 15 months from the date of termination (clauses (ii) and (iii) are collectively

referred to herein as the "Severance Payment"), (iv) reimbursable expenses (as determined in accordance with Section 6(c) hereof) incurred but not yet reimbursed through the date of termination and (v) any vacation accrued but not yet used through the date of termination. The Severance Payment shall be paid to the Employee over such 15 month period in accordance with the Corporation's normal payroll practices, subject to such payroll deductions as are required by law. Benefits otherwise receivable by the Employee pursuant to Section 7(d)(iii) shall be reduced to the extent comparable benefits are actually received by him from a subsequent employer during the fifteen month period following his termination, and any such benefits actually received by him shall be reported to the Corporation. Notwithstanding the provisions herein the Employee shall not be entitled to the Severance Payment in the event that the Corporation terminates the Employee's employment without cause within 30 days of proceeding to discontinue its operations in which case the Employee shall only be paid his Base Salary earned and any Discretionary Bonus declared by the Board and earned but not yet paid through the date of termination, reimbursable expenses incurred but not yet reimbursed through the date of termination and any vacation accrued but not yet used through the date of termination.

(e) Good Reason. The Employee may terminate his employment at any time during the Term for Good Reason. In such event the vesting of the Employee's options previously awarded to the Employee pursuant to Section 6(b)(i)(A) hereof accelerate as set forth in Section 7(d) and the Corporation's obligations to the Employee shall be the same as set forth in Section 7(d). For purposes hereof, "Good Reason" shall mean:

(1) Any reduction of the Employee's salary or a material reduction of the Employee's benefits under Section 6;

(2) Failure to maintain the Employee in the position specified in Section 1 or assignment to the Employee of duties materially inconsistent with his responsibilities in the position specified in Section 1 or diminution of the Employee's authority in the position specified in Section 1; or

(3) Failure to obtain requisite stockholder approval by December 31, 2004 in order to have validly issued all stock options contemplated under Section 6(b) herein and authorize the common stock underlying all such options.

(f) Non-Renewal of Agreement. Subject to the provisions of this subsection, if the Corporation elects not to renew the Term at any time, the Corporation shall pay the Employee (i) his Base Salary through the end of the current Term, (ii) an amount equal to his then current Base Salary for a period of nine (9) months, (iii) if the Employee is covered by the Corporation's healthcare policy at the time of termination, the cost of COBRA to continue such healthcare, in each case for a period of 9 months from the end of the current Term (clauses (ii) and (iii) are collectively referred to herein as the "Non-Renewal Severance Payment"), (iv) reimbursable expenses (as determined in accordance with Section 6(c) hereof) incurred through the end of the current Term and (v) any vacation accrued but not used through the end of the current Term. The Non-Renewal Severance Payment shall be paid to the Employee over the 9 month period following the end of the current Term in accordance with the Corporation's normal payroll practices, subject to such payroll deductions as are required by law. Benefits otherwise receivable by the Employee pursuant to Section 7(f)(iii) shall be reduced to the extent

comparable benefits are actually received by him from a subsequent employer during the nine month period following the end of the current Term, and any such benefits actually received by him shall be reported to the Corporation.

Section 8. Inventions and Confidential Information; Prior Restrictive Covenants; Covenant Not to Compete.

(a) Nondisclosure Agreement. The Employee and the Corporation have entered into that certain Nondisclosure, Proprietary Information and Developments Agreement dated as of the date hereof (the "Nondisclosure Agreement") and attached hereto as Exhibit B, the terms and conditions of which are incorporated by reference herein and made a part hereof.

(b) Prior Restrictive Covenants. The Employee represents that his employment with the Corporation will not violate or conflict with any obligations to any previous employer or other party, including without limitation, obligations relating to nondisclosure, proprietary information, non-competition and non-solicitation.

(c) Covenant Not To Compete. (i) The Employee agrees that during the Restricted Period (as defined below), the Employee shall not either directly or indirectly, whether by establishing a new business or by joining an existing one, and whether as a principal, employee, stockholder, officer, director, broker, agent, consultant, corporate officer, licensor or in any other capacity, become associated with a business enterprise whose business includes photonic computer imaging, in the geographical areas in which, prior to the Employee's termination of employment, the Corporation is doing or proposes to do business, as evidenced by the Corporation's business plan, financial budgets or other similar documentation. "Restricted Period" shall mean the period during which the Employee is employed by the Corporation plus one (1) year following the date of termination of employment; provided, however, that in the event the Employee is terminated without cause by the Corporation, the Corporation shall have the right, but not the obligation, exercisable in its sole and absolute discretion, to extend the Restricted Period from one (1) year to two (2) years after termination in exchange for increasing the Severance Payment due to the Employee pursuant to Section 7(d) hereof by such amount equal to the Employee's Base Salary (as of immediately prior to such termination) and most-recent Annual Bonus for a period of one additional year, which additional severance shall be paid ratably by the Corporation to the Employee over the year following the first anniversary of such termination in accordance with the Corporation's normal payroll practices, and subject to such payroll deductions as are required by law or applicable employee benefit programs. The Corporation may exercise this right by providing written notice to the Employee of its intention to exercise no later than 90 calendar days after such termination.

(ii) the Employee and the Corporation intend that this covenant not to compete shall be construed as a series of separate covenants, one for each country and each product line. If, in any judicial proceeding, a court shall refuse to enforce any one or more of the separate covenants deemed included in subsection (i) of this Section 8(c), then such unenforceable covenant shall be deemed severed from this Agreement for the purposes of such judicial proceeding to the extent necessary to permit the remaining separate covenants to be enforced.

(iii) the Employee acknowledges that the Corporation plans to conduct business on a nationwide basis, that its sales and marketing prospects are for expansion into national and international markets and that, therefore, the territorial and time limitations set forth in this Section 8(c) are reasonable and properly required for the adequate protection of the business of the Corporation. In the event any such territorial or time limitation is deemed to be unreasonable by a court of competent jurisdiction, the Employee agrees to the reduction of the territorial or time limitation to the area or period which such court deems reasonable.

(iv) the existence of any claim or cause of action by the Employee against the Corporation shall not constitute a defense to the enforcement by the Corporation of the foregoing restrictive covenants, but such claim or cause of action shall be arbitrated separately.

(v) the Employee agrees that during the Restricted Period he will not solicit for employment any employee of the Corporation or solicit business from any customer of the Corporation.

(vi) the Employee agrees that during the Restricted Period he will not interfere with, disrupt or attempt to disrupt the relationship between the Corporation and any of its customers, suppliers, lessors, lessees, licensors or licensees, or any other Person with whom the Corporation has a business relationship.

Section 9. Waiver; Amendments. The waiver by the Corporation of the breach of any provision of this Agreement by the Employee shall not operate or be construed as a waiver of any subsequent breach by the Employee. Any waiver of any term or condition, or any amendment or supplementation, of this Agreement shall be effective only if in writing and signed by the Employee and the Corporation, and, in the case of any waiver by the Corporation and any amendment or supplementation consented to by the Corporation, if approved by the Board.

Section 10. Notices. Any notices permitted or required under this Agreement shall be delivered in writing and shall be deemed given upon the date of personal delivery or forty-eight (48) hours after deposit in the United States registered or certified mail, postage fully prepaid, return receipt requested, or sent via facsimile (receipt confirmed) addressed as follows:

IF TO THE CORPORATION:

1 Bridge Street
Suite 15
Irvington, New York 10533
Attention: William R. Bronner, Esq.
Facsimile: (914) 591-3785

IF TO THE EMPLOYEE:

655 Millrace Lane
Rockland, DE 19732-0209

or at any other address as any party may, from time to time, designate by notice given in compliance with this Section.

Section 11. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (other than the conflict of law principles thereof).

Section 12. Headings. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Section 13. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings, agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto or any predecessor of any party hereto regarding the subject matter of this Agreement.

Section 14. Agreement Binding; Assignment. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement may be assigned by the Corporation to any business, enterprise, person, firm, corporation, partnership, association or other entity acquiring (by purchase, merger or otherwise), directly or indirectly, the business and substantially all of the assets of the Corporation or of the subsidiaries of the Corporation; and, upon such assignment and the assumption by the assignee of all of the obligations of the Corporation hereunder, the Corporation shall be released of all of its obligations under this Agreement. Neither this Agreement nor any of the rights or obligations of the Employee hereunder may be assigned by the Employee.

Section 15. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.

Section 16. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

Section 17. Arbitration. If at any time during the term of this Agreement any dispute, difference, or disagreement shall arise upon or in respect of the Agreement, and the meaning and construction hereof, every such dispute, difference, and disagreement shall be referred to a single arbiter agreed upon by the parties, or if no single arbiter can be agreed upon, an arbiter or arbiters shall be selected in accordance with the rules of the American Arbitration Association and such dispute, difference, or disagreement shall be settled by arbitration in accordance with the then

prevailing commercial rules of the American Arbitration Association, and judgment upon the award rendered by the arbiter may be entered in any court having jurisdiction thereof.

Section 18. Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Section 19. Equitable Relief. The Employee recognizes that the services to be rendered by him hereunder are of a special, unique, extraordinary and intellectual character involving skill of the highest order and giving them peculiar value, the loss of which cannot be adequately compensated for in damages. In the event of a breach of this Agreement by the Employee, the Corporation shall be entitled to injunctive relief or any other legal or equitable remedies. The remedies provided in this Agreement shall be deemed cumulative and the exercise of one shall not preclude the exercise of any other remedy at law or in equity for the same event or any other event.

Section 20. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

Section 21. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

Section 22. Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Section 24. Survival and Non-Mitigation. The termination of the Employee's employment hereunder shall not affect the enforceability of Sections 7, 8, 11, 13, 14, 15, 17, 18, 19 and 24. The Employee shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced by any compensation earned by the Employee as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by the Employee to the Corporation, or otherwise, except to the extent expressly so provided.

Section 25. Separate Counsel. The parties acknowledge that the Corporation has been represented in this transaction by Dreier LLP, that the Employee has not been represented in this transaction by the Corporation's attorneys, and the Employee has been advised that it is important for the Employee to seek separate legal advice and representation in this matter. The Corporation

will reimburse the Employee for the reasonable legal fees and expenses of counsel employed by him with respect to the negotiation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Employment Agreement to be executed and delivered as of the date first above written.

ELECTRO-OPTICAL SCIENCES, INC.

Joseph V. Gulfo
By:----------
Name: JOSEPH V. GULFO
Title: CHIEF EXECUTIVE OFFICER

/s/ Joseph V. Gulfo

JOSEPH V. GULFO

EXHIBIT 10.6

ELECTRO-OPTICAL SCIENCES, INC.

CONSULTING AGREEMENT

This Consulting Agreement (this "AGREEMENT") is made as of May 31, 2005, between Electro-Optical Sciences, Inc., a Delaware corporation with its principal office at 3 West Main Street, Suite 201, Irvington, New York 10533 (the "COMPANY"), and Marek Elbaum, Ph.D. ("CONSULTANT"), residing at 79 Beechdale Road, Dobbs Ferry, New York 10533.

WHEREAS, the Company and Consultant agree that it is in both of their best interests for Consultant to resign as a director and as Chief Science and Technology Officer of the Company; and

WHEREAS, the parties desire to terminate the Employment Agreement between the parties dated as June 20, 2003, as amended as of January 5, 2004, and to enter into this Agreement in order to assure the Company of the services of Consultant and to set forth the services and compensation of Consultant, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, representations and covenants contained herein, the Company and Consultant agree as follows:

1. Position and Duties. The Company shall retain Consultant, and Consultant shall serve, as the Company's Chief Scientist. Consultant shall perform such services and functions customary with such position, including without limitation advice on integration of product development, mentoring and advising staff scientists, providing new product vision, supporting research and development, and such other similar services as shall from time to time be assigned to him by the Chief Executive Officer or the Chief Executive Officer's designee (collectively, "MANAGEMENT").

Except as may be expressly otherwise consented to in writing by Management, Consultant will use his best efforts to promote the interests of the Company and devote a majority of his business time and energies to the business and affairs of the Company. Without the prior consent of Management, which consent shall not be unreasonably withheld, Consultant shall not, directly or indirectly, as owner, partner, joint venturer, stockholder, Consultant, corporate officer or director, engage or become financially interested in, or be concerned with any other duties or pursuits which interfere with the performance of the services described hereunder, or which even if noninterfering, may be inimical or contrary to the best interests of the Company. Notwithstanding the foregoing, Consultant's ownership of securities of a public company engaged in competition with the Company's business not in excess of two percent (2%) of any class of such securities shall not be considered a breach of the covenants set forth in this Paragraph 1.

2. Term. Unless terminated earlier pursuant to Paragraph 5 of this Agreement the term of this Agreement will commence on the date hereof and continue for a period of two (2) years (the "INITIAL TERM") and be automatically renewed for an additional one (1) year period unless either Consultant or the Company determine that this Agreement shall not be extended for such one (1) year period (the "RENEWAL TERM"). Consultant shall be entitled to a $100,000 lump sum payment payable by the Company upon such determination.

3. Place of Performance. Consultant's services hereunder shall be primarily performed in the Metropolitan New York area at a location or locations determined by Management. From time to time, at the discretion of Management, Consultant shall be required to work at other locations determined by the Company, and to attend business meetings, presentations and the like requiring business travel, as shall be reasonably necessary to perform the services contemplated hereunder.

4. Compensation.

(a) Fee. As compensation for services rendered under this Agreement, Consultant shall receive a monthly fee of $14,583.33 which shall be payable in installments as determined by the Company, but not less frequently than once a month (the "FEE"). The Fee shall be paid without withholding and Consultant shall be responsible for all taxes payable with respect to the Fee.

(b) Expenses. Consultant is authorized to incur reasonable expenses in connection with conducting and promoting the business and affairs of the Company, including reasonable expenses for travel and similar items, subject to such limitations and restrictions set by Management from time to time. Consultant will be reimbursed for reasonable out of pocket expenses actually incurred by him in furtherance of services rendered under this Agreement. Such expenses shall be reimbursed on a bi-weekly or other regular basis not less frequently than the Company's employees are reimbursed generally, to be determined in the Company's sole discretion, upon presentation by Consultant of an itemized account of such expenditures, consistent with policies and procedures established by Management, together with such receipts or other evidence as the Company shall require for tax or accounting purposes.

5. Termination.

(a) Termination by the Company for Cause. The Company may terminate Consultant's services at any time, without notice, for "CAUSE". Termination by the Company for "Cause" shall mean termination based upon: (a) the conviction of Consultant of, or entry by Consultant of a plea of guilty or no contest to, any felony, fraud, misappropriation or embezzlement or other crime of moral turpitude; (b) the conviction of Consultant of, or entry by Consultant of a plea of guilty or no contest to, any crime or offence involving money or other property of the Company; (c) failure by Consultant to materially perform the services described in this Agreement or materially perform or observe any of the terms and provisions of this Agreement in a manner reasonably satisfactory to Management and the Board of Directors of the Company, and failure to cure such misconduct or default within thirty (30) days of receipt of written

notice from the Company stating the nature of the misconduct or default in reasonable detail (provided that such thirty day notice shall not apply in the case of a failure to materially perform or observe any of the terms and provisions of Section 6 or 7 of this Agreement); or (d) willful or purposeful misconduct on the part of Consultant that is, or that will be if continued, materially and demonstrably damaging or detrimental to the Company, financial or otherwise. In the event the Company terminates Consultant pursuant to this Section, Consutant shall not be entitled to receive any payment pursuant to this Agreement other than accrued but unpaid fees under Section 4 hereof.

(b) Termination by the Company for Financial Hardship. In the event that the company experiences severe financial hardship then the Company and Consultants shall renegociate the terms of this agreement at such time based on the then current circumstances. Severe financial hardship shall be determined the Company's Board of Directors in its reasonable discretion. In the event the Company terminates Consultant pursuant to this Section, Consutant shall not be entitled to receive any payment pursuant to this Agreement other than accrued but unpaid fees under Section 4 hereof. This Section shall have no further force and effect upon consummation by the Company of an offering or a securities offering producing not less than $10,000,000 in gross proceeds.

(c) Termination by the Company upon Death or Disability. If Consultant shall die or become "Permanently Disabled" during the term of this Agreement, this Agreement and all compensation hereunder shall terminate, except the $100,000 termination payment provided in Section 2. For the purposes of this Agreement, Consultant shall be deemed to be "PERMANENTLY DISABLED" if, during the Initial Term or the Renewal Term, because of ill health, physical or mental disability, or for other causes beyond Consultant's control, Consultant shall have been unable or unwilling, or shall have failed to perform his duties hereunder for either sixty (60) consecutive days or a total period of ninety (90) days in any twelve-month period during the term of this Agreement whether consecutive or not. Notwithstanding anything to the contrary contained herein, during any period that Consultant fails to perform his duties hereunder as a result of his disability (but prior to the termination of this Agreement as a result of such disability), (i) Consultant shall continue to receive his monthly fee, provided that payments made to Consultant pursuant to this Section 6 shall be reduced by the sum of the amounts, if any, payable to Consultant at or prior to the time of any such payment under any disability benefit plan or program to which Consultant is entitled, and (ii) the Company shall have the right to hire or engage any other individual or individuals to perform such duties and functions as the Company shall desire, including those duties heretofore performed by Consultant.

6. Protection of Confidential Information. Consultant hereby covenants and agrees that all of the terms, conditions and provisions relating to inventions, non-disclosure and non-competition of that certain Employee Invention, Non-Disclosure and Non-Competition Agreement, dated September 1, 1997, by and between the Company and Consultant (the "EINN AGREEMENT") are, and shall continue to be, in full force and effect as if Consultant were still serving as an Employee of the Company for so long as Consultant shall be engaged as a Consultant to the Company hereunder, and are hereby ratified and confirmed in all respects notwithstanding the change of status of Consultant from an Employee to a Consultant.

Consultant represents and warrants that he has complied with the EINN Agreement since the date thereof, and covenants and agrees that he shall comply with the EINN Agreement during the Initial and the Renewal Term. This Agreement shall supersede the EINN Agreement to the extent of any difference or inconsistency in the provisions of said agreements.

7. Covenant Not To Compete.

(a) Consultant agrees that: during the term of this Agreement and for a period of two (2) years thereafter (the "RESTRICTED PERIOD") Consultant shall not either directly or indirectly, whether by establishing a new business or by joining an existing one, and whether as a principal, stockholder, officer, director, broker, agent, consultant, corporate officer, licensor or in any other capacity, compete with the Company or become associated with a business enterprise which competes with any business operation of the Company or any business operation of the Company planned prior to Consultant's termination of employment, as evidenced by the Company's business plan, financial budgets or other similar documentation (including, without limitations, the DIFOTI, MelaFind, MelaMeter or SkinSurf products), in the geographical areas in which, prior to Consultant's termination of employment, the Company is doing or proposes to do business, as evidenced by the Company's business plan, financial budgets or other similar documentation, during the Restricted Period.

Notwithstanding the foregoing, Consultant's ownership of securities of a public company engaged in competition with the Company's Business not in excess of two percent (2%) of any class of such securities shall not be considered a breach of the covenants set forth in this Paragraph.

(b) Consultant and the Company intend that this covenant not to compete shall be construed as a series of separate covenants, one for each county and each product line. If, in any judicial proceeding, a court shall refuse to enforce any one or more of the separate covenants deemed included in subsection (a) of this Section 7, then such unenforceable covenant shall be deemed severed from this Agreement for the purposes of such judicial proceeding to the extent necessary to permit the remaining separate covenants to be enforced.

(c) Consultant acknowledges that the Company plans to conduct business on a nationwide basis, that its sales and marketing prospects are for expansion into national and international markets and that, therefore, the territorial and time limitations set forth in this Section 7 are reasonable and properly required for the adequate protection of the business of the Company. In the event any such territorial or time limitation is deemed to be unreasonable by a court of competent jurisdiction, Consultant agrees to the reduction of the territorial or time limitation to the area or period which such court deems reasonable.

(d) The existence of any claim or cause of action by Consultant against the Company shall not constitute a defense to the enforcement by the Company of the foregoing restrictive covenants, but such claim or cause of action shall be litigated separately.

(e) Consultant agrees that he will not solicit for himself or any entity the employment of any employee of the Company.

(f) Consultant agrees that he will not persuade or attempt to persuade any customer of the Company to cease doing business with the Company or any of its subsidiaries or affiliates, or to reduce the amount of business any customer does with the Company or any of its subsidiaries or affiliates.

(g) Consultant agrees that he will not solicit for himself or any entity the business of a customer of the Company or any of its subsidiaries or affiliates, or solicit any business which was a customer of the Company or any of its subsidiaries or affiliates within six months prior to the termination of the Consultant's employment.

8. Independent Contractor. It is the express intention of the Company and Consultant that Consultant perform the Services as an independent contractor to the Company. Nothing in this Agreement shall in any way be construed to constitute Consultant as an agent, employee or representative of the Company. Without limiting the generality of the foregoing, Consultant is not authorized to bind the Company to any liability or obligation or to represent that Consultant has any such authority.

9. Additional Agreements. Consultant agrees that, following termination of his engagement hereunder, Consultant shall furnish such information and proper assistance to the Company as may reasonably be required by the Company in connection with any litigation in which the Company or any of its subsidiaries or affiliates is, or may become, a party. The Company agrees to reimburse Consultant for any reasonable out-of-pocket disbursements (including reasonable attorney fees), incurred by Consultant in connection with or furnishing such information or providing such assistance. The Company further agrees that following termination of this Agreement other than pursuant to Section 5(a) hereof, the Company shall pay to Consultant an amount equal to any payments Consultant would have had to make in order to extend his insurance benefits under COBRA for a period of 18 months. For so long as Consultant is providing services to the Company hereunder, all currently outstanding options and/or warrants granted to Consultant in his former capacities at the Company shall be continued on the same terms as previously provided; however, any incentive stock options shall become non-statutory by reason of the change in Consultant's status.

10. Lock-up. Consultant agrees to enter into and be bound by a lock-up agreement with respect to any securities of the Company held by him. Such agreement shall be in the same form and on terms not less favorable to those entered into by principal shareholders of the Company.

11. Disputes.

(a) Arbitration. Consultant and the Company will arbitrate any and all controversies, claims or disputes arising out of or relating to this Agreement or the Consultant's employment with the Company ("Claims") in New York City before a single arbitrator at the American Arbitration Association ("AAA") in accordance with the AAA's National Rules for the Resolution of Employment Disputes. Consultant waives any right to a trial by jury in any

controversy, claim or dispute with the Company, including those that arise under any federal, state or local law, including without limitation, claims of harassment, discrimination or wrongful termination under common law or under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Consultant Retirement Income Security Act of 1974 and the Fair Labor Standards Act.

(b) Administrative Claims. While this Agreement precludes the Consultant from filing a court action for any Claim against the Company, this Agreement does not prohibit the Consultant from filing an administrative charge with a local, state or federal administrative body.

(c) Injunctive Relief. Notwithstanding the agreement to arbitrate, Consultant recognizes that the services to be rendered by him are of a special, unique, extraordinary and intellectual character involving skill of the highest order and giving them peculiar value, the loss of which cannot be adequately compensated for in damages and that a breach by the Consultant of his obligations under Section 6 or 7 of this Agreement would cause the Company irreparable harm and no adequate remedy at law would be available to the Company. Accordingly, if any dispute arises between the parties under Section 6 or 7, the Company shall also have the right to institute judicial proceedings in any court of competent jurisdiction to enjoin such acts without the need to post a bond. If such judicial proceedings are instituted, such proceedings shall not be stayed or delayed pending the outcome of any arbitration proceeding under Section 11(a) of this Agreement. The Consultant and the Company consent to the jurisdiction of the United States District Court for the Southern District of New York (or if such court cannot exercise jurisdiction for any reason, to the jurisdiction of the New York State Supreme Court for the County of New York) for this purpose. Further, the Consultant and the Company waive any objections to the jurisdiction of such courts based on improper or inconvenient forum

12. Successors; Binding Agreement. This Agreement and all rights of Consultant hereunder shall inure to the benefit of, and shall be enforceable by, Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If Consultant should die while any amount would still be payable to him hereunder if he had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to Consultant's devisee, legatee or other designee or, if there be no such designee, to Consultant's estate.

13. Notice. For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given three days after being mailed by United States registered or certified mail, return receipt requested, postage prepaid, or the day of being sent by hand delivery or by facsimile (if promptly confirmed in writing), addressed as follows:

If to Consultant: 79 Beechdale Road
Dobbs Ferry, New York 10533

If to the Company: 3 West Main Street, Suite 201

Irvington, New York 10535
Attention: Chief Executive Officer
Facsimile: 914/591-3701

With a copy to: Valerie A. Price, Esq.
Dreier LLP
499 Park Avenue
New York, New York 10022
Facsimile: 212/652-3789

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

14. Amendments and Waivers. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by Consultant and such officers of the Company as may be specifically designated by Management of the Company. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

15. Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. Entire Agreement; Supercession. This Agreement and the EINN Agreement set forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, Consultant or representative of any party hereto or any predecessor of any party hereto, including without limitation that certain Employment Agreement between the Company and Consultant dated as of June 20, 2003, as amended as of January 5, 2004.

17. Nonassignability. This Agreement is entered into in consideration of the personal qualities of Consultant and may not be, nor may any right or interest hereunder be, assigned by him without the prior written consent of Company. It is expressly understood and agreed that this Agreement, and the rights accruing and obligations owed to the Company hereunder, and the obligations to be performed by the Company hereunder, may be assigned by the Company to any of its successors or assigns.

18. Choice of Law. This Agreement is to be governed by and interpreted under the laws of the State of New York without regard to its conflict of laws principles.

19. Survival. The termination of Consultant's engagement hereunder shall not affect the enforceability of Sections 6, 7 , 9, 10, 11, 18 and 19 of this Agreement.

20. Headings. The Section headings appearing in this Agreement are for the purposes of easy reference and shall not be considered a part of this Agreement or in any way modify, demand or affect its provisions.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first-above written.

ELECTRO-OPTICAL SCIENCES, INC.

By: /s/ Joseph V. Gulfo

Name: Joseph V. Gulfo, M.D., M.B.A.
Title: Chief Executive Officer

CONSULTANT

/s/ Marek Elbaum

Marek Elbaum, Ph.D.

ELECTRO-OPTICAL SCIENCES, INC., HEREINAFTER REFERRED TO AS TENANT
WITNESSETH: Owner hereby leases to Tenant and Tenant hereby hires from Owner Approximately 3,718 Sq. ft., known as Suite 15 (the "Demised Premises") located on the second floor in the building known as 1 Bridge Street (the "building") in the Village of Irvington, State of New York 10533, for the term as set forth in Article 39 of the Lease Rider (or until such term shall sooner cease and expire as hereinafter provided).

both dates inclusive, at an annual rental rate as set forth in Article 37 of the Lease Rider which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of nil debts and dues, public and private, at the lime of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other places as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent 1. Tenant shall pay the rent as above and as hereinafter provided.

Occupancy 2. Tenant shall use and occupy demised premises for office, laboratory and assembly of prototypes and instruments use and for no other purpose.

Tenant Alterations: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's, may make alterations, installations, additions or improvements which are nonstructural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner, which approval shall not be unreasonably withheld or delayed. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may reasonably require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or

materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days after Tenant receives notice thereof, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall upon installation become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's. rights thereto and to have them removed by Tenant in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed, by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense. Notwithstanding anything to the contrary set forth herein, Tenant shall. have the right to make interior non-structural alterations which do not adversely affect the Building systems or structure, but only after receiving Owner's written consent, not to be unreasonably withheld or delayed.

Maintenance
And Repairs:

4. a) Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein. Tenant shall be responsible for all damage or injury to the demised premises or any other port of the building and the systems and equipment thereof, whether requiring structural or nonstructural repairs caused by or resulting from carelessness, omission, neglect or improper conduct of Tenant, Tenant's, subtenants, agents, employees, invitees or licensee, or which arise out of any work, labor, service or equipment done for or supplied to Tenant or any subtenant or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant, unless caused by the act or omission of Owner, its agents, employees or contractors. Tenant shall also repair all damage to the building and the demised premises caused

by moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the demised premises for which Tenant is responsible, using contractors reasonably acceptable to Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible shall be performed by Owner at the Tenant's expense. Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portion of its demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such system. presently exist) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the premises for which Owner may be responsible hereunder after Tenant has actual knowledge thereof. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof. Notwithstanding anything to the contrary set forth herein: (a) Owner shall, at Owner's expense, maintain and keep in good repair the interior and exterior structural portions of the building. the roof, floor slabs, foundation and Building systems and (b) Owner shall make all structural or extraordinary alteration. and repairs to the Building and the demised premises that are required to be made by any local, state or federal laws now or hereafter in effect ("Legal Requirements"), unless due to Tenant's particular manner or use of the demised premises. Owner shall be solely responsible for the cost of any such alterations and repairs unless same are necessitated by Tenant's manner of use of the demised premises. (b) (l) Owner hereby reserves the right at any time and from time to time to make alterations or additions to the Building, the buildings adjoining the same and any other buildings located on Bridge Street owned by Owner (collectively, the "Bridge Street Properties" {"BSP"}). Owner further reserves the right at any time and from time to time to construct, or permit to construct other buildings or improvements within the BSP. Such rights set forth in two preceding sentences include, without limitation, the. right to

construct additional stories on any such building or buildings, the right to build adjoining the same, the right to construct multi-level, elevated, underground and other parking facilities within the BSP and the right to erect in connection with any such construction or building temporary scaffolds and other aids to such construction or building. Owner shall have the right at any time and from time to time to change the street address of the Demised Premises or to change the name of the Building without incurring any liability to Tenant. Tenant acknowledges that the Building may be expanded to include-multiple levels (the "Expansion") and that the Expansion may include office, retail and residential uses. (ii) If an excavation shall be made upon land adjacent to the Demised Premises, Tenant shall permit the person(s) authorized to do such excavation to enter the Demised Premises for the purpose of doing such work as such person(s) deems necessary to preserve the building of which the Demised Premises is a part and to support the same by proper foundations without any claim for damages or indemnification from Owner or abatement of rental or other charges hereunder. (iii) There shall be no allowance to Tenant for a diminution in rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making any changes, alterations, additions, improvements, repairs or replacements in or to any portion of the Building, the Demised Premises or the BSP, or in or to any fixtures, appurtenances or equipment therein, and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire, Insurance, Floor Loads:

6. Prior to the commencement of the lease, if Tenant is then in possession, and at all times thereafter, Tenant at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer and all regulations of the New York State Board of Fire Underwriters, Insurance Service office with respect to the demised premises arising out of tenant's manner of use thereof, or with respect to the building if arising out of Tenant's manner of use of the premises or the building (including the use permitted under the lease). Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has. by its manner of use of the demised premises or method of operation therein violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to Owner's satisfaction against all damages. interest, penalties and expenses, including, but not limited to, reasonable attorney's fees by cash deposit or by surety bond in an

amount and in a company satisfactory to Owner, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense or constitute a default under any lease or mortgage under which Owner may be obligated, or cause the demised premises or any part thereof to be condemned or vacated. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Owner to any liability or responsibility to any person or for property damage. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for the fire applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article and if by reason of such failure the fire insurance rates shall, at the beginning of this lease, or any time thereafter, be higher than it Otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate, then applicable to said premise. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's reasonable judgment to absorb and prevent vibration, noise and annoyance.

Subordination:

7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute any certificate that Owner may request within five (5) days after demand.

Property Loss, Damage, Reimbursement, Indemnity:

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by any windows of the demised premises are temporary closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition or this lease, or the carelessness, negligence or improper conduct of the Tenant. Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and other Casualty:

9. (a) If the demised premises or any part thereof shall be

damaged by fire or other casualty, Tenant shall give immediate notice except thereof to Owner and this lease shall continue in full as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, than the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result "of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other

casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases end waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasers insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain:

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi-public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of this lease to remove such property, trade fixtures and equipment at the end of the term; and provided further such claim does not reduce Owner's award. Assignment,

Mortgage, Etc.:

11. Tenant, for itself, its heirs, distributes, executors, administrators, legal representatives successors, assign, mortgage or encumber this agreement, nor underlet or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance, Transfer of the majority of the stock of a corporate Tenant shall be deemed an assignment If this loose be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as Tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein

contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current:

12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Premises:

13. (a) Owner or Owner's agent. shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time and, at other reasonable times to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonab1y desirable to the demised premises or to any other portion of the building or which Owner may elect to perform. Tenant shall permit Owner to show same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligation. hereunder. (b) (i) Owner shall have the exclusive right to use and obtain access to all or any part of the roof, exterior side and rear walls of the Demised Premises for any purpose, including but not limited to, erecting signs or other structures on or over all or any part of the same, erecting scaffolds and other aids to the construction and installation of the same, and installing, maintaining, using, repairing, and replacing pipes, ducts, conduits and wires leading through to or from the Demised Premises and

serving other parts of the BSP in location, which do not materially interfere with Tenant's use of the Demised Premises. Tenant shall have no right whatsoever in the exterior of exterior walls or the roof of the Demised Premises. (ii) Tenant shall permit Owner to install, use and maintain pipes, ducts and conduits within or through the Demise Premises adjacent to the Demised Premises, Owner shall _____ and install access doors and confine their location, wherever practical, to closets, coat rooms, toilet rooms, corridors and kitchen or pantry rooms. Notwithstanding the foregoing, in performing any work in or about the demised premises, Owner shall use all reasonable efforts not to disturb Tenant's business operations, including performing work after hours if practicable. In no event shall any work or renovations by Owner result in a reduction of the size of the demised premises.

Vault, Vault Space, Areas:

14. No Vaults; vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed construction or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy:

15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record Notwithstanding the foregoing, Owner represents that (i) there is a valid Certificate of Occupancy covering the building, including the demised premises, which permits the Permitted Use in the demised premises (subject to the requirement that any new construction receive its own new certificate of occupancy or completion) and (ii) there are no violations of Legal

Requirements affecting the demised premises as of the date hereof.

Bankruptcy:

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be canceled by Owner by the sending of a written notice to Tenant within a reasonable time after the happening of anyone or more of the following events: (i) the commencement of a case in bankruptcy or under the law of any state - naming Tenant as the debtor; or (ii) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease. (b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date determination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be relet by the Owner for the unexpired term of said lease, or any part thereof before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premise, so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or role of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other then Tenant; or if this lease be rejected under Section 235 of Title 11 of the U.S. Code

(bankruptcy code):, in any one or more of such events upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period shall not thereafter with reasonable diligence and in good faith, provided. (b) If the notice provided for in (a) hereof shall have been given and the term shall expire as aforesaid; or if Tenant shal1 make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required which default shall not be cured within ten (10) days after notice: then and in any of such events Owner may without notice re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption:

18. In case of any such default, reentry, expiration and/or dispossess summary proceedings or by otherwise, (a) the rent shall become due thereupon and be paid up to the time of such reentry, dispossess and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or chare a higher rental than that in this lease, ant/or (c) Tenant or the legal representative of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or

any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as reasonable legal expense, and attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding . Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole reasonable judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements and/or decorations shall not operate or be considered to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises or in the event that the demised premises are re-let. for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as re-entry summary proceedings and other remedies were not herein provided for. Mention in the lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of demised premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease, or otherwise.

Fees and Expenses:

19. If Tenant shall default, beyond any applicable grace and cure period in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs

any obligations for the payment of money, including but not limited to attorney's fees, in instituting. prosecuting or defending any action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within rendition ten (10) days after notice thereof to Tenant of any bill or statement to Tenant therefore. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

Building Alterations and Management:

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefore to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number of designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenants making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations by Owner:

21. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the demised premises and is thoroughly acquainted with its condition and agrees to take the same "as is" as of the date hereof and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and

completely expresses the agreement between Owner and Tenant and any executory agreement hereunder made shall be ineffective to change, modify, discharge or effect an abandonment of its in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Term: 22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment: 23. Owner covenants and agrees with Tenant that upon paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premise hereby demised, subject, nevertheless to the terms and conditions of this lease including, but not limited to Article 31 hereof and to the ground lease underlying lease, and: mortgages hereinbefore mentioned.

Failure to Give Possession: 24. If Owner is unable to give possession of the Possession: demised premises on the date of the commencement of the term hereof, because of the holding over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession) until after Owner shall have given Tenant written notice that the premises are substantially ready for Tenant's occupancy. If Permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions, and provision of this lease except as to the covenant to pay rent. The provisions of this

article are intended to constitute "an express provision to the contrary" within the meaning of Section 223 -a of the New York Rent Property Law. Notwithstanding the foregoing, Owner shall give possession within 90 days after fully executed copy of this lease is exchanged between the parties, subject however, to the obligation of the Tenant to perform, any work it is to perform in a timely manner.

No Waiver:

15. The failure of Owner or Tenant to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not 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 Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination or the lease or a surrender of the premises.

Waiver of Trial by Jury:

26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually an summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a

counterclaim under Article 4.

Inability to Perform:

27. Except as otherwise set forth to the contrary elsewhere in this Lease, this Lease and the obligation of Tenant to pay rent have under and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or implied to be supplied or is unable to make, or is delayed in making any repair, additions, alterations, or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

Bills and Notices:

28. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises from a part or at the 1ast known residence address or business address of Tenant or left at any of the aforesaid be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice. Notwithstanding the foregoing: (i) notices sha1l be deemed given on the day of delivery, or, if delivery is refused, on the first business day on which delivery is attempted, and (ii) in addition to the notice methods specified above, notices given to or by Owner or Tenant may be given by hand or by courier service (such as Federal Express or Airborne) that provides a signed receipt. Notices shall be given to Owner and Tenant at their addresses set forth in Rider Paragraph 67.

Services Provided by Owner:

29. As long as Tenant is not in default under any of the covenants of this lease, Owner shall provide: (a) heat to the demised premises when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) water for ordinary lavatory purpose, but if Tenant uses or consumes water for any other purposes or in unusual quantities (of

which fact Owner shall be the sole judge), Owner may install a water meter at Tenant's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered; (c) cleaning service for the demised premise on business days at Owner's expense provided that the same are kept in order by Tenant. If, however, said premises are to be kept clean by Tenant it shall be done at Tenant's sole expense, in a manner satisfactory to Owner and no one other than persons approved by Owner shall be permitted to enter said premises or the building of which they are a part for such purpose. Tenant shall pay Owner the cost of removal of any of Tenant's refuse and rubbish from the building; (d) If the demised premises are serviced by Owner's air conditioning/ cooling and ventilating system, air conditioning/ cooling will be furnished to tenant from May 15th through September 30th on business days (Mondays through Fridays, holidays excepted) from 8:00 a.m. to 6:00 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/cooling is being furnished as aforesaid. If Tenant requires air-conditioning/cooling or ventilation for more extended hours or on Saturdays, Sundays or on holidays, as defined under Owner's contract with Operating Engineers Local 94-94A, Owner will furnish the same at Tenant's expense. (e) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning power systems or cleaning or other services, if any, when necessary by reason of accident or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Owner for as long as may be reasonably required by reason thereof, provided, however, that Owner sha1l provide Tenant with reasonable notice of any such cessation of utilities to the extent reasonably possible. If the building of which the demised premises are a part supplies manually operated elevator service, Owner at any time may substitute automatic control elevator service and upon ten days written notice to Tenant, proceed with alterations necessary therefor without in any wise affecting this lease or the obligation of Tenant hereunder. The same shall be done with a minimum of inconvenience to Tenant and Owner shall pursue the alteration with due diligence.

Captions: 30. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions: 31. The term "office", or "offices", wherever used in this lease,

shall not be construed to mean premises used as a store or stores. for the sale or display, at any time, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purpose or for manufacturing. The term "Owner" means a landlord or lessor and as used in this lease means only the owner, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said leases or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder. The words "re-enter" and - "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturday, (except such portion thereof as is covered by specific hours in Article 29 hereof), Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

Adjacent Excavation Shoring:

32. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation license an opportunity at reasonable times on reasonable notice to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damage, or indemnity against Owner, or diminution or abatement of rent.

Ru1es and Regulations:

33. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be

given in elect the manner set forth in Article 28 and Rider Paragraph 67. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensee.

Security:

34. Tenant has deposited with Owner the sum of $11,54.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease, it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent. Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the term, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants, and conditions or this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building of which the demised premises form a part, Owner shall have the right to transfer the security to vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or

encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel Certificate: 35. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default. Successors and Assign: 36. The covenants, conditions and agreements contained in the lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributes, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

Successors and Assign: 36. The covenants, conditions and agreements contained in the lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributes, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

SEE RIDER ATTACHED HERETO AND INCORPORATED HEREIN

In Witness Whereof. Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner: /s/ William Thompson

- ----------

Witness for Tenant: /s/ George Lind, EOS

- ----------

ACKNOWLEDGMENTS

CORPORATE OWNER
STATE OF NEW YORK, SS.:
County of

On this day of , 19 , before me

Personal came
to me known, who being by me duly sworn, did depose and say that he resides

in

that he is the of

the corporation described in and which executed the foregoing instrument, as OWNER;, and that he signed his name thereto by order of the board of directors of the corporation.

- ----------

CORPORATE TENANT
STATE OF NEW YORK, SS.:
County of

On this day of , 19 , before me

Personally came
to me known, who being by me duly sworn, did depose and say that he resides

in

that he is the of

the corporation described in and which executed the foregoing instrument, as OWNER;, and that he signed his name thereto by order of the board of directors.

- ----------

INDIVIDUAL OWNER
STATE OF NEW YORK, SS.:
County of

On this day of 19 , before me

personally came
to me known and known to me to be the individual described in and who, as Owner, executed the foregoing instrument and acknowledged to me that he executed same.

- ----------

INDIVIDUAL TENANT
STATE OF NEW YORK, SS.:
County of

On this day of 19 , before me

personally came
to me known and known to me to be the individual described in and who, as Tenant, executed the foregoing instrument and acknowledged to me that he executed same.

- ----------

IMPORTANT PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 33.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or other used for any purpose other than for ingress or egress from the Demised Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public ball of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any band trucks, except those equipped with rubber tires and side guards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be bung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the Demised Premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Demised Premises, or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein. nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No Awnings or other projections will be attached to the outside walls of the building without prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall he exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the Demised Premises or the building or on the inside of the Demised Premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the Demised Premises or the building of which they form a part. Except as the parties may agree as part of the construction agreement, no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Demised Premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his/her Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass to the building signed by the Owner. Owner will furnish passes to persons for whom any Tenant requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors to permeate in or emanate from the Demised Premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent. If such safe, machinery, equipment; bulky matter or fixtures requires special handling, all work in connection therewith shall comply with all laws and regulations applicable thereto and shall be done during such hours as Owner may designate.

RIDER TO LEASE
Between
BRIDGE STREET PROPERTIES, LLC, Owner
and
ELECTRO-OPTICAL SCIENCES, INC., Tenant

37A. In the event any conflict between any of the provisions of this Rider and any of the terms of the appended lease (including the Rules and Regulations), such conflict will be resolved in every instance in favor of this Rider.

37. BASE RENT

Commencing as of the Commencement Date, Tenant shall pay t0 Owner the annual base rent, in equal monthly installments on the first day of each month as follows:

	Annual	Monthly	
Years 1	$ 50,220.00	$ 4,185.00	
Years 3	$ 69,433.65	$ 5,786.14	3.75% increase
Years 5	$ 72,037.41	$ 6,003.12	3.75% increase

38. OWNER'S WORK - EXHIBIT B

A. Within 30 days after execution of this lease, Owner will commence and within 60 days thereafter complete Owner's Work, in space adjacent to current space identified in exhibit A2 as 58'x166" in a good safe and workman-like manner in accordance with all Legal Requirements, subject to the provisions of Paragraph #19 (Force Majeure) and any of Tenant's work interfering with Owner's work. The scope and detail of Owner's Work is set forth on annexed Exhibit B. However, Owner shall not be liable to Tenant for damages of any kind resulting from Owner's delay in delivering possession of the premises to Tenant, for whatever reason.

B. Owner will give Tenant notice of Substantial Completion of Owner's Work or issuance of a temporary certificate of occupancy with respect to Owner's Work. Upon issuance of Owner's notice, the parties shall agree upon and execute a "punch list" of items necessary or desirable to complete Owner's Work, along with a schedule of time within which to complete such "punch list" items, which schedule shall not exceed 30 days.

C. Except for the completion of the adjacent space and aforementioned punch list items, Tenant's occupancy of the premises known as adjacent space in exhibit A2 shall be deemed to be its acknowledgment that it has examined and accepts the Demised Premises in "as is" condition on the Lease Commencement Date, subject to latent defects, hazardous and toxic substances or conditions not caused by Tenant and violations of law existing on or prior to the Commencement Date. Further, Tenant agrees that Owner shall have no obligation to perform any additional work, supply any materials, incur any expense or make any additional improvements, installations or alterations to the Demised Premises, beyond Owner's Work, in

order to prepare the Demised Premises for Tenant's occupancy and use.

39. COMMENCEMENT DATE AND TERMS OF LEASE

A. The commencement date of this lease (the "Lease Commencement Date") shall be the date set forth below or the date of occupancy, whichever is sooner. The term of this lease shall expire on the last day of the month which occurs 3 year(s) after the Lease Commencement Date, unless such term shall sooner expire as in this lease provided.

B. The Tenants obligation to pay the annual base rent provided for herein shall commence on 12/16/98 for the currently occupied space the Lease Commencement Date and ending on (the "Lease Expiration Date"). The obligation to pay the rent on the adjacent space (suite 9) shall commence on the date on which Owner Work is completed in such adjacent space and ending upon the aforementioned Lease Expiration Date.

C. The Lease Commencement Date shall be 12/16/98 for the currently occupied space and for the adjacent space (suite 9) shall commence on the date on which Owners Work is completed in such adjacent space and ending upon the aforementioned Lease Expiration Date.

40. REAL ESTATE TAXES

A. Effective as of the Commencement Date, Tenant agrees to pay in addition to base rent as additional rent during the term of this lease and any and all renewals, extensions, and modifications hereof Tenant's proportionate share or any and all real estate taxes, school taxes, village taxes, public and governmental charges and assessments, all costs, expenses and attorneys fees incurred by Owner in contesting Real Estate Taxes (Owner having the sole authority to conduct such a contest or enter into such negotiations) as to any of same and all sewer and other taxes and charges (collectively the "Real Estate Taxes") assessed against BSP (Tax Lots Sec. Sheet 03, Lots P,P,P105 and P4B and Sec. 4 Sheet 7 Lot P 89), which are subject to increase whether the increase is taxation results from a higher tax rate or an increase in the assessed valuation of the said property or the imposition of a special assessment against the property ("Tenant's Tax Contribution"). All such payments shall be appropriately pro-rated for any partial tax year occurring during the term hereof. Tenant's Tax Contribution shall be an amount equal to the product obtained by multiplying the entire amount of Real Estate Taxes by a fraction, the numerator shall be the square footage of the Demised Premises and the denominator shall be the square footage (including the Demised Premises) of BSP.

B. Tenant shall pay Owner on the first day of each calendar month during the term and amount equal to one-twelfth (l/2th) of the amount Owner estimates from time to time as necessary to pay Tenant's Tax Contribution. Such estimates shall be based upon actual tax bills to the extent available and Owner's reasonable estimate of projected increases in the amount of the Real Estate Taxes. Any such estimate shall be subject to adjustment when the actual amount of Real Estate Taxes shall be determined, and payment by Tenant to Owner of any deficiency, or payment by Owner to Tenant for any overpayment, shall be made within 20 days after delivery by Owner to Tenant of a statement therefore. Only Owner shall be eligible to institute or prosecute a tax certiorari proceedings to reduce the assessed valuation of the premises.

The term "Real Estate Taxes" shall not include the following: any tax or fees payable for air or development rights acquired by Owner or the Building after the date hereof, interest or penalties imposed by the assessing authorities; or any real estate taxes imposed or attributable to a period of time not falling within the term of this lease. If general or special assessments may be paid in installments over a period of years, only the installments coming due during the tax year in question shall be included within the Real Estate Taxes payable by Tenant for such year.

41. COMMON AREA MAINTENANCE

Commencing as of the Commencement Date, Tenant agrees to pay to Owner in addition to the Base Rent set forth herein, additional rent consisting of Tenant's Common Area Maintenance Contribution, as determined in accordance with this Article.

Section I. For the purpose of this Article, the following definitions sha1l apply:

(a) Tenant's Common Area Maintenance Contribution shall be an amount equal to the product obtained by multiplying the entire amount of Common Area Maintenance Expenses by a fraction, the numerator shall be the square footage of the demised premises and the denominator shall be the square footage (including the demised premises) of BSP.

(b) "Common Area Maintenance Expenses" shall mean any or all expenses incurred by Owner in connection with the operation of the Buildings of which the Demised Premises forms a part. Common Area Maintenance Expenses shall include, without being limited thereto, the following: (i) salaries, wages of employees which Owner may engage in the on-site operation and maintenance of BSP; (ii) payroll taxes, workmen's compensation; (iii) water waste line maintenance (including sewer rental) furnished to BSP, together with any taxes on any such utilities; (iv) the cost of all insurance carried by Owner applicable to the Building (including. without limitation, primary and excess liability, and further including vehicle insurance, fire and extended coverage, vandalism and all broad form coverage including. without limitation, not, strike, and war risk insurance, flood insurance, boiler insurance, plate glass insurance and sign insurance); (v) the cost of all building and cleaning supplier; (vi) the cost of all charges for service contracts with independent contractors for all areas of the BSP; (vii) the cost of landscaping, site maintenance and snow removal (except if Tenant performs snow removal); (viii) taxes (such as sales: and use taxes); (ix) security systems, security personnel; and any other costs and expenses in connection with the operation, maintenance and repair of BSP. In no event shall the Common Area Expenses be less than $1.50 per sf.

(c) "Common Area Maintenance Expense Statement" shall mean a statement in writing signed by Owner and delivered to Tenant setting forth the amount of Common Area Maintenance Contribution which is Tenant's Proportionate Share.

Section 2. The Tenant shall pay to Owner as additional rent for the Demised

Premises on the first day of each calendar month during the term an amount equal to one twelfth the estimated Tenant's Proportionate Share of such Common Area Maintenance Contribution.

Section 3. Every Common Area Maintenance Statement given by Owner to Tenant as set forth herein shall be conclusive and binding upon Tenant unless (a) within 30 days after the receipt of such statement, Tenant shall notify Owner that it disputes the correctness thereof, specifying the particular respects in which such statement is claimed to be incorrect, and (b) if such dispute shall not have been settled by agreement, shall submit the dispute to arbitration before a panel of three accountants, one chosen by the Owner who may by the Owner's regular accountant, one by the Tenant and a third chosen by the two previously appointed accountants. Pending the determination of the dispute by agreement or arbitration as aforesaid, Tenant shall. within thirty (30) days after receipt of the Common Area Maintenance Statement, pay additional rent in accordance with such statement and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Owner shall forthwith pay Tenant the amount of Tenant's overpayment of rents resulting from compliance with the Common Ares Maintenance Expense Statement.

42. ADDITIONAL RENT

A. All of the rent and additional rent hereunder shall be payable directly to the Owner unless the Owner notifies Tenant otherwise, subject to Tenant's obligation to subordinate this Lease to the interests of the holder of any mortgage, ground lease, etc. under Art. 7 of the printed portion of this lease.

B. All sums whatsoever not included within rent or additional rent and payable by Tenant under this Lease shall constitute additional rent and shall be payable without set-off or deduction, whether or not so specified elsewhere in this Lease.

C. Tenant shall have thirty (30) days from the service of any additional rent statement to notify Owner, by certified mail, return receipt requested, that it disputes the correctness of such statement. After the expiration of such thirty (30) day period, such statement shall be binding and conclusive upon Tenant. If Tenant disputes the correctness of any such statement, Tenant shall, as a condition precedent of its right to contest such correctness make payment of the additional rent billed, without prejudice to its position. If such dispute is finally determined in Tenant's favor, Owner shall refund to Tenant the amount overpaid.

46. ELECTRICITY AND HEAT

A. Supplementing Article 29 of the printed portion of this lease, Owner shall have the right at its option, sole discretion and expense, to install or cause to be installed a new heating system to service the Demised Premises. Upon the installation of such new heating system and throughout the duration of Tenant's occupancy of the Demised Premises, Tenant shall keep said system and all its equipment in good working order and repair at Tenant's own cost and expense in default of which Owner may cause such system and/or equipment to be replaced and collect the cost thereof from Tenant as additional rent. Tenant agrees to pay for the cost of heating fuel supplied for consumption at the Demised Premises, as and when bills are rendered, directly to

the entity supplying heating fuel for consumption at the premises, and on default in making such payment Owner may pay such charges and collect same from Tenant as additional rent.

B. Further, supplementing Article 29 of the printed form of this lease, Owner shall have the right, at its option, sole discretion and expense. to install or cause to be installed a meter or submeter measuring electricity consumed by Tenant at the Demised Premises. After installation and throughout the duration of Tenant's occupancy of the Demised Premises, Tenant shall keep said meter and installation equipment in good working order and repair at Tenants own cost and expense in default or which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant as additional rent. Tenant agrees to pay for electricity consumed, as shown on said meter or submeter as and when bills are rendered, directly to the Owner or utility providing such service, and on default in making such payment Owner may pay such charges and collect the same from Tenant as additional rent.

47. WATER CHARGES

If Tenant requires, uses consume water for any purpose in addition to ordinary lavatory (of which fact Tenant appoints Owner to be the sole judge, but Owner must be reasonable) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation, thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own coat and expense in default of which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant as additional rent. Tenant agrees to pay for water consumed, as shown on said meter and when bills are rendered, and on default of making such payments, Owner may pay such charges and collect the same for Tenants, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge or any other tax, rent, levy or charge which now or thereafter is assessed, imposed or a lien upon the Demised Premise, or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system.

48. SIGNS

Tenant shall not install or maintain any sign, symbol or advertisement on the exterior of the Demised Premises, except on the main directory. All signs are subject to Owner prior written consent and shall comply with appropriate building codes and municipal requirements and shall be commercially manufactured (no paper or hand-written sign).

49. BROKER

Tenant and Owner mutually acknowledges and represents that they have dealt with no person or corporation with respect to the negotiation of this Lease other than _____. Tenant agrees to bear the cost of any commission and each party agrees to indemnify and hold the other harmless from and against any claims for brokerage commissions or other compensation from any person or corporations with whom it has dealt.

50. INDEMNITY

Tenant will indemnify and save harmless Owner against and from any and all liabilities, obligations, damages, penalties, and claims which may be imposed upon or incurred by or asserted against Owner arising from injuries to persons or property in or about the Demised Premises or in areas used by Tenant in connection with its use of the Demised Premises if due to Tenant's negligence or fault, including reasonable attorney fees incurred.

51. INSURANCE

A. Tenant shall obtain and keep in full force at all times commencing with Tenant's occupancy, and continuing throughout the term, at its own cost and expense, comprehensive general liability insurance, such insurance to afford protection initially in an amount of not less than $1,000,000 for injury

D. There shall be maintained deductibles in such amounts as Tenant shall reasonably determine but in no event in excess of $5,000.00 with respect, to a property insurance policy and in no event in excess of $5,000.00 with respect to a liability insurance policy.

E. At least 10 days prior to commencement of construction of any work in the Demised Premises, Tenant and Tenant's contractor shall deliver to Owner (and Owner's mortgagees, if required by them) certificates of insurance or policies required by evidencing all insurance coverages provided in this Article. Tenant's contractor shall be required to comply with all of such insurance obligations only through final completion of all such work.

F. Except for insurance for Tenant's trade fixtures and personal property at the premises, all property insurance policies shall cover the interest of Tenant, Owner, and/or Owner's mortgages, as their interest may appear, and the policies therefor shall provide that adjustment of any losses thereunder shall include in the negotiation, not be settled or finalized without, and be payable to, Owner and Owner's mortgages. All such property insurance policies shall contain a provision allowing other insurance that is provided to or for Owner.

G. All policies of insurance maintained by Tenant under this Article shall be written as primary policies not contributing with, nor in excess of, insurance coverage that Owner and its mortgagees may have. Tenant shall not carry separate or additional insurance which, in the event of any loss, or damage is concurrent in form or would contribute with the insurance required to be maintained by Tenant under this Lease.

H. If Tenant shall not insure for business interruption, or, to the extent that Tenant shall be a self-insurer (including. without any limitation. any deductible under any insurance policy) Tenant agrees that Owner shall be released and Tenant hereby releases Owner from business interruption loss which could have been covered by an insurance policy if Tenant had chosen to purchase one.

46. MAINTENANCE

A. Other than as elsewhere provided herein, Tenant is responsible for all costs associated with the maintenance of the Demised Premises and in keeping the Demised Premises in a proper manner and in a general state of cleanliness and repair.

B. Tenant shall. at its own sole cost and expense maintain and keep in good order condition and repair all mechanical items, the use of which is included herein or is required for the permitted use of the Demised Premises by the health and building codes of the Village of Irvington, Town of Greenburgh or Westchester County, as well as hot water heater, vents and ducts located within the Demised Premises.

C. Owner shall be responsible for all repairs to the building, unless such repairs are necessitated by Tenant's acts or negligence, including the acts or negligence of its agents or employees.

47. OWNERS COSTS TO APPROVE OR CONSENT

If Tenant requests Owner's approval or consent to alterations, additions, improvements, or assignment or any other matter or thing requiring Owner's consent or approval under this Lease, and if in connection with such request Owner seeks the advice of its attorneys, architect and/or engineer, then Owner, as conditions precedent to granting its consent or approval, may require that the Tenant pay the reasonable fee or Owner's attorneys, architect and/or engineer in connection with the consideration of such request and/or the preparation of any documents pertaining thereto.

48. USE AND OPERATION

A. The Demised, Premises shall be used for office, laboratory and assembly of prototype and instruments use and no other purpose.

B. Any change from substantially the use as described herein shall constitute a default under this Lease.

C. The Tenant shall not suffer or permit the Demised Premises to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) result in the Demised Premises not being operated in a manner consistent with a first-class, high quality office or which would be inconsistent with the nature and the operation of the building, or (ii) constitute a public or private nuisance.

49. BREACH BY TENANT

A. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, Owner shall have the right to [MISSING TEXT]

The security interest and lien created by this subparagraph shall terminate, and Owner shall deliver to Tenant one or more UCC-3 termination statements terminating such lien, upon

the earlier of

(i) The termination of this Lease by reason of Owner's default as determined by a court of competent jurisdiction; or

(ii) the termination or other expiration of this Lease pursuant to its terms.

E. Additionally, should the Premises not be occupied for a period of in excess of 120 consecutive days, it shall be a non-curable default hereunder. Notwithstanding foregoing, if the Premises are closed by reason of a fire or other casualty, then the provisions herein shall not apply, unless the same would result in the loss of the present use for the Premises

50. ADDITIONAL SERVICES

A. Tenant covenants and agrees that, in the event any law, rule regulation or judicial determination has the effect of increasing any of the services to be furnished by Owner hereunder, Tenant agrees to pay to Owner, as additional rent the cost incurred and or to be incurred by Owner to provide such additional service to Tenant or Tenant's pro-rata share if provided to other Tenants.

B. If any sales or use tax be imposed upon Owner in connection with any of the services to be provided by Owner hereunder, Tenant shall pay to Owner, as additional rent, the amount or such tax.

51. REFUSE

A. Tenant shall at all times keep the areas used by Tenant for ingress and egress to the Demised Premises free and clear of all dirt, garbage, rubbish, refuse (which such term "refuse" as used in the Lease shall mean and include crates, boxes, merchandise, containers. bottles, paper, food and similar items), snow and ice.

B. Tenant shall accumulate all garbage, rubbish, and refuse for disposal only within the interior of the Demised Premises and not in the common pr service area and in areas therein kept closed by a door and in well-coveted sanitary containers designed to prevent odors from emanating therefrom. No such garbage, rubbish or refuse shall be removed, or be permitted to be removed from the interior of the Demised Premises, except in accordance with local law and Building Rules and Regulations. Tenant shall be responsible for all costs and expenses in connection with Tenant's garbage removal. Tenant shall also comply with all laws and ordinances with regard to its garbage removal and be responsible for any breach thereof.

52. EXTERMINATOR

Tenant shall, at its sole cost and expense , keep the Premises free from vermin, rodents, or anything of like, objectionable nature which emanates from the Premises or is caused by Tenant's use of the Premises and shall employ only a licensed exterminator at the request or Owner. In the event of Tenant's failure to keep the Premises free from vermin, rodents or

anything else of like nature, Owner shall have the right, at Tenant's expense to take all necessary steps or measures to eradicate any and all vermin and rodents and other things of like nature from the Demised Premises and the cost thereof shall be added as additional rent to the installment of fixed minimum rent payable on the next monthly rental payment date and Tenant shall pay on that date such additional rent.

53. OWNER'S LIMITED LIABILITY

Anything in this lease to the contrary notwithstanding, Tenant for itself, its successors and assigns, covenants and agrees that the liability of the Owner shall be limited so that only the assets and interest or the Owner in and to One-Two Bridge Street and the Bridge Street Property, Irvington, New York, shall be available and/or liable for the satisfaction or security for payment of any judgment or claim against Owner or any indebtedness of Owner arising from any default by Owner.

Tenant for itself, its successors and assigns covenants and agrees that no other assets of any of the principals of Owner whether owned by them jointly or individually, directly or indirectly, shall be liable to pay or satisfy any such judgment, claim, demand or indebtedness arising from any default by Owner.

54. LATE PAYMENT

If Tenant shall fail to pay any installment of base rent or any amount of additional rent for more than fifteen (15) days after the same shall have become due and payable, Tenant shall pay Owner a late charge of five cents for each dollar of the amount of such base rent or additional rent as shall not have been paid to Owner within such fifteen (15) days after becoming due and payable. Such late charges shall be without prejudice to any of Owner's rights and remedies hereunder or at law or in equity for nonpayment or late payment of rent and shall be in addition thereto.

55. ALTERATION

In the event that the Tenant shall make any alterations resulting in the demolition of any part of the structural portions or interior or exterior of the premises, then said alterations shall be made only with the consent of the Owner, in writing and the Tenant shall pay additional security to the Owner equal to the amount necessary) to restore the Premises to its original condition at the time the Tenant took occupancy. Ordinary alterations not of a permanent nature which are necessary for the conduct of the business of the Tenant, which do not involve demolition as aforesaid shall not require Owner's consent.

62 TENANT'S ADDITIONAL COVENANTS

(ii) Tenant shall not change exterior architecture change (whether by alteration, replacement, rebuilding or otherwise) the exterior color and/or architectural treatment of the Demised Premises or of the building or any part thereof.

(iii) Tenant shall not use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise. The plumbing facilities shall not be used for refrigeration purposes or for any other purposes other than that for which they are constructed, no foreign substance of any kind shall be thrown therein and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant;

(iv) Tenant shall not subject any fixtures or equipment in or on the Demised Premises which are affixed to the realty, to any mortgage, liens, conditional sales agreements, security interest or encumbrances, except as is otherwise permitted hereunder; Notwithstanding the foregoing, Tenant shall have the right to lease office equipment and supplies in the ordinary course of Tenant's business, and shall have the right to grant liens and to enter security agreements and conditional sales agreements in connection therewith.

(v) Tenant shall not suffer, allow or permit any odor or any noise, vibration or other effect to constitute a nuisance or otherwise interfere with the safety, comfort or convenience of Owner or other Tenants in the building.

63. SECURITY

A. Supplementing the provisions of Article 31, Tenant has deposited with Owner the sum of $11,154.00 as security hereunder with a cash deposit. Tenant shall increase the security in-accordance with and at the same time base rent increases are effective hereunder so that 2 month's base rent shall be on deposit at all times. If at any time Tenant shall be in default in the payment of rent or in the keeping observance or performance of any other covenant, agreement, term, provision or condition, Owner may at its election apply the security so on deposit with Owner, to the payment of any such rent or to the payment of the costs incurred or to be incurred by Owner in curing such default, as the case may be. If, as a result of any such application of all or any part of such security, the amount of security so on deposit with Owner shall be less than required, Tenant shall forthwith deposit with Owner an amount equal to the deficiency. If at the expiration of the term of this lease Tenants shall not be in default in the keeping, observance or performance of any such other covenant, agreement, term, provision or condition, then Owner shall within a reasonable time after the expiration of said term, return to Tenant said security, if any, then on deposit with Owner.

B. Tenant has on hand already a security deposit in the amount of $3,600.00 with Owner. Upon signing Tenant shall deposit with Owner an additional S2,377.50 so that the security deposit equals 1 months rent. An additional sum shall be deposited with the Owner to equal 2 months base rent on 12/16/99. This billing will bring Tenant's security deposit on hand up to the required amount to be held by Owner for the second year of tenancy.

64. IMPROVEMENTS

All improvements, changes and alterations made by or on behalf of Tenant in and/or the Demised Premises shall, upon installation, become the property of owner and shall be

surrendered by Tenant to Owner at the expiration or sooner termination of the term of this Lease, except for items of personality not affixed to the realty and Tenant's trade fixtures, which shall at all times be property of Tenant. If any security interest, chattel mortgage or other lien or encumbrance shall attach to the Tenant's Initial Improvements or any change, improvement or alteration thereto, Tenant will, at Tenant's sole cost and expense, promptly cause same to be released of record within ten (10) days after notice of the attachment thereof, failing which Owner may cause some to be released by payment, bond or otherwise, as Owner may elect, and Tenant will reimburse Owner for all costs and expense incidental to the removal of any such lien, security interest, chattel mortgage or other lien or encumbrance, incurred by Owner. Upon failure of Tenant to so reimburse Owner at the option shall become Owner thereof. Tenant further covenants and agrees that, prior to opening for business at the Demised Premises, the entire cost of all changes, improvements and alterations made by or on behalf of Tenant at Tenant's expense will be fully paid for. In the event Tenant purchases furnishings or equipment for the premises on installment or under a conditional sales agreement, Tenant will provide in such installment or conditional sale agreement, that in the event of Tenant default, Owner at its option shall be entitled to have an assignment of Tenant's interest in said furnishings or equipment, if being intended that Tenant may not remove any leased improvements if Owner elects to pay the debt and assume an assignment of Tenant's interest.

65. MISCELLANEOUS

A. If any of the provisions of this Lease. or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Lease. or the application or such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

B. This Lease shall be governed in all respects by the laws of the State of New York.

C. Without incurring any liability to Tenant. Owner may permit access to the Demised Premises and open the same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, Marshall or court officer entitled to, or reasonably purporting to be entitled to such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Owner hereunder shall not be deemed a recognition by Owner that the person or official making such demand has any right or in or to this Lease, or in or to the Demised Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

D. Tenant agrees that its sole remedies in cases where Owner's reasonableness in exercising its judgment or withholding its consent or approval is applicable pursuant to a specific provision of this Lease, or any rider or separate agreement relating to this Lease, if any, shall be those in the nature of an injunction, declaratory judgment, or specific performance, the rights to

money damage; or other remedies being hereby specifically waived, unless Owner has acted in bad faith.

E. This Lease shall not be binding upon Owner unless and until it is signed by Owner and a fully executed copy thereof is delivered to Tenant.

F. This Lease shall be construed without regard to any presumption or other role requiring construction against the party causing this Lease, or any part thereof to be drafted.

66. CONDITION OF DEMISED PREMISES

A. Supplementing the provisions of Article 15 hereof Owner makes no representations as to the size of the Demised Premises. Tenant shall give proper notice to Owner of any notice it receives of the violation of any law or requirement of any public authority with respect to the Demised Premises or the use or occupation thereof. If any governmental authority having jurisdiction over the Demised Premises shall require additional fire fighting equipment, Tenant agree to install and maintain such equipment at its sole cost and expense. Notwithstanding the foregoing, Owner represents and warrants to Tenant that the Permitted use fails within the uses permitted under currant zoning of the Building, and does not violate the term of any mortgage. ground lease or other superior interest to which this lease is subordinate is subordinate.

B. Tenant covenants and agrees to conduct its business at the Demised Premises so as to prevent any noxious or offensive order from said Demised Premises and Tenant further covenants and agrees to install, operate and maintain proper and sufficient flue, ventilating and exhaust systems and any other equipment, electrical and/or mechanical or any kind, all at Tenant's sole cost and expense, as deemed necessary or desirable to prevent or abate such odors and in full compliance with all law, codes, resolution, rules, regulations of the premises and otherwise, requirements and recommendations of all government and quasi-governmental agencies or authorities.

67. NOTICES

Any bill, notice or other communication which either party may desire or be required to give to the other under this lease shall be deemed sufficiently given or rendered if in writing and delivered by registered or certified mail, return receipt requested. as follows:

1. From Owner to Tenant at:

   Electro-Optical Sciences, Inc.
   One Bridge Street
   Irvington, New York 10533
   Attn: George Lind

2. From Tenant to Owner at:

   Bridge Street Properties, LLC
   One Bridge Street
   Irvington, New York 10533
   Attn: William Thompson

After the Commencement Date:

Same as above.

Either party shall have the right to substitute addresses for such notices upon prior written notice to the other given in the manner hereinabove set forth.

68. ASSIGNMENT AND SUBLETTING

A. Supplementing the provisions of Article 11 of the printed form of this lease, a transfer, directly or indirectly, of the majority, i.e., 50% or more in the aggregate, of the stock of a corporate tenant or 50% or more in the aggregate, of any interest, beneficial or otherwise, of a joint venture or partnership, or an assignment to an entity into which or with which Tenant is merged or consolidated or to which substantially all of Tenant's assets are transferred or to any corporation which controls or is controlled by Tenant or is under common control with Tenant, shall be an assignment requiring the written consent of Owner which consent shall not be unreasonable withheld.

B. Each time Tenant desires to assign this Lease or sublease its interest in the Demised Premises, it shall submit in writing to Owner (i) the name and address of the proposed assignee or sublessee, (ii) a counterpart of the proposed agreement or sublease, (iii) information satisfactory to Owner as to the nature and character of the business of the proposed assignee or sublessee, and (iv) biographical, banking, financial. credit and other information relating to the proposed assignee or sublessee reasonably sufficient to enable Owner to determine the character and financial responsibility of the proposed assignee or sublessee. Any such consent of Owner shall be subject to the terms of this paragraph and conditioned upon (i) there being no default by Tenant under any of the rents, covenants and conditions of this Lease at the time that Owners consent is requested and on the date of the commencement of the term of any sublease or the effective date of any such proposed assignment, (ii) (iii) delivery to Owner of a written statement duly executed by Tenant acknowledging that Tenant shall continue to remain directly and primarily liable to Owner under this lease for the remaining term notwithstanding such sublease or assignment, (iv) the proposed use by which assignee or sublessee being in compliance with Article 2 and 15 of the printed form of this lease, (v) Tenant paying Owner the reasonable cost and expenses, including architect's. engineer's and attorneys' and brokerage fees incurred by Owner with respect to such subletting. Further, and as an additional condition to Owner's approval of any sublease, Tenant shall remit to Owner fifty (50%) percent of any and all rent and additional rent Tenant receives, pursuant to the sublease, in excess of the rent and additional rent provided for in this lease as increased pursuant to subparagraph (v) hereof less costs of securing sub-tenant including brokerage fees, build-out costs and such other costs required by the Tenant as a condition of subletting. The additional security deposit required under clause (ii) shall be made each time there shall be an assignment or sublease during the term of this lease.

C. Upon receiving Owner's written consent, Tenant shall deliver to Owner within ten (10) days after execution thereof a true copy of the duly executed sublease or assignment agreement. Any such sublease shall provide that the sublessee shall be subject to and shall

comply with all applicable terms and conditions of this lease to be performed by Tenant hereunder.

69. NO RECORDING

Tenant expressly warrants and represents that it will not record this lease, but Owner will, upon Tenant's request and at Tenant's cost, execute a memorandum of lease which Tenant may record.

70. ATTORNEYS FEES & REIMBURSEMENT

A. Notwithstanding anything to the contrary contained in this lease, Tenant shall reimburse Owner for the expenses of attorney's fees and disbursements Owner incurs which arise out of or are caused by (a) Tenant's default or threatened default under the terms of this lease, whether an action, suit or proceeding is commenced based upon such default. or (b) Tenant's request or Owner to review or execute documents, including without limitation, assignment, sublease or occupancy documents in connection with this lease. Any such reimbursement shall be deemed additional rent due from Tenant.

B. Further, Tenant shall reimburse Owner. as additional rent, for all fees, charges and disbursements of attorneys, architects, engineers or other representative or agents incurred by Owner and arising out or resulting from Tenant's alteration or improvements, proposed or actual, to the prudent or advisable to seek professional advise or expertise with respect to this lease and Tenant's occupancy of the Demised Premises.

71. ATTORNMENT

If the Demised Premises, Building or land where the Building is located is or will be encumbered by a mortgage, and the mortgage is foreclosed, or if the Demised Premises, Building or property is sold pursuant to a foreclosure or by reason of a default under a mortgage, the following shall apply notwithstanding the foreclosure, the sale, or the default (i) Tenant shall not disaffirm this lease or any of its obligations under this lease; (ii) at the request of the applicable mortgagee or purchaser at a foreclosure or sale, Tenant shall attorn to the mortgagee or purchaser, and execute a new lease for the Demised Premises setting forth all the provisions of this lease except that the term of the new lease shall be for the balance of this lease. In confirmation of this attornment, Tenant shall promptly execute and deliver on its own cost and expense, any instrument, in recordable form, if required, that Owner or any mortgagee may to evidence such attornment, and Tenant hereby constitutes and appoints Owner attorney-in-fact for Tenant to executed any such instrument for and on behalf of Tenant.

72. ADDITIONAL REMEDIES

In the event that Owner shall pay any sum of money or do any act which shall require the expenditure of any sums by reason of the failure of Tenant to perform any of the covenants, terms or conditions contained in this lease, Tenant covenants to repay immediately such sums to Owner within 20 days after demand, together with interest thereon at the rate of twelve

(12%(percent per annum shall be added as additional rent to the next monthly installment of base rent becoming due. Nothing contained herein shall be construed to postpone the right of Owner immediately upon expending such sums, to collect such sums, with interest at the aforesaid rate, by action or otherwise.

73. MORTGAGES

If. in connection with obtaining, continuing or renewing financing for which the Demised Premises Building or land or any interest therein represents collateral in whole or in part, a lender or other mortgagee shall request modifications of this lease as a condition of financing. Tenant will not reasonably withhold or delay this consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect the Tenant's leasehold interest created hereunder or decrease the size of the demised premises.

74. DEMISED PREMISES

If the general location, size and layout of the Demised Premises are outlined in Exhibit A, such Exhibit A shall not be deemed to be a warranty, representation or agreement on the part of Owner that the Demised Premises and the Building are as indicated thereon. Nothing in this lease shall be construed as a grant or demise by Owner to Tenant of the roof or exterior walls of the Building, of the space above and/or below the Demised Premises, of the parcel of land on which the Demised Premises is located, and/or any parking or other areas adjacent to the Building.

75. OWNER'S CONSENT

If in this lease it is provided that Owner's consent or approval as to any matter will not be unreasonably withheld, and it is established by a court or body having final jurisdiction thereof that Owner has been unreasonable, the only effect of such finding shall be that Owner shall be deemed to have given its consent or approval, but Owner shall not be liable to Tenant or any third party in any respect for money damages by reason of withholding its consent. unless Owner's refusal to grant or consent or approval was done in bad faith.

76. NO LIENS

Notwithstanding anything contained in this lease to the contrary, Tenant covenants and warrants that it shall not directly or indirectly create or permit or suffer to be created or to remain, and will promptly after notice thereof discharge or cause to be discharged, any mortgage, lien, encumbrance or charge on pledge, of security interest in or conditional sale or other title retention agreement with respect to the Demised Premises, except as expressly permitted elsewhere in this lease.

77. PARKING

A. Owner shall provide Tenants at no cost to Tenant, for the convenience of all employees and invitees during regular business hours 8 nonspecified parking space(s) located in

area or areas adjacent to I Bridge Street or 2 Bridge Street, Irvington, New York, designated by notice sent by Owner from time to time throughout the term of this lease. Owner reserves the express right to change the location of these parking spaces as in its sole discretion it deems appropriate from time to time. Tenant's privilege and use of these parking spaces are subject to the Owners rules and regulations as set forth herein or as otherwise established by Owner and in conformity with all local rules, regulations and ordinances of the Village of Irvington and any other government entity having jurisdiction over the premises.

B. Tenant covenants and agrees that its employees and invitees shall not at any time cause any vehicle to be parked, placed or remain within and along the perimeter of the Building, including any and all fire lanes, parking spaces and areas, roadway and driveways or any other area controlled by Owner, except in areas designated by Owner for Tenant's use.

C. Use of all parking spaces and any other parking areas, roadways and driveways by Tenant, its employees or invitees will be at their own risk, and Tenants shall not be liable for any injury to person or property, or for loss of damage to any automobile or its contents, resulting from theft, collision, vandalism or any other cause whatsoever. Owner shall have no obligation whatsoever to provide a security guard or any other personnel or device to patrol, illuminate, monitor, guard or secure any parking area. If, however, Owner does so provide such guard, personnel or device, it shall be solely for Owner's convenience and Owner shall not be liable for any act or omission of such guard, personnel or device in failing to prevent any such theft, vandalism., loss, injury or damage.

D. There shall be no overnight parking. Tenant shall cause its employees and invitees to remove their automobiles from all parking areas at the end of the working day. If any vehicle owned or used by Tenant, its employee, or invitees remains in any parking area, all costs, expenses and liabilities incurred by Owner in removing said vehicle, or any damages resulting to such vehicle or to Tenant's property or property of others by reason of the presence or removal of such vehicle shall be paid by Tenant to Owner as additional rent as and when billed by Owner.

E. If space is available, Owner agrees to provide Tenant with an unspecified number of additional parking spaces in consideration of Tenant's payment of additional rent at the rate of $15.00 per space per month ("Parking rent") upon the same terms and conditions as set forth in this Paragraph. Notwithstanding the foregoing, at the end of the first year of the term of this lease, the number of parking spaces and parking rent may be increases or decreased at the discretion of the Owner. Each such installment of additional rent shall be remitted at the same time and in the same manner as installments or base annual rent.

78. CONDEMNATION

A. If less that fifty (50%) percent of the Demised Premises is taken y condemnation or in any other manner for any public or quasi-public use or purpose, then Owner may elect to terminate this lease by notice sent not more than sixty (60) days after the taking. Upon the date specified in such notice of termination, which date shall not be later than sixty (60) days after the date of such notice, the term of this lease shall terminate.

B. If Owner does not so elect to terminate the lease in the event of a taking of less that 50% of the Demised Premises, the term of this lese shall continue s to the part of the Demised Premises not taken. However, effective the date of the taking, the base annual rent shall be reduced by a fraction, the numerator of which is the area in square feet of the part of the Demised Premises taken and the denominator of which is the area of the Demised Premises immediately prior to such taking. All other provisions and conditions of the lease shall remain in full force and effect.

C. If a portion of the Demised Premises shall be taken which would materially adversely affect Tenant's use of the Demised Premises, and if Owner shall not offer at Owner's expense to provide alternate space or facilities to replace the space or facilities so taken, Tenant may elect to terminate this lease by notice to Owner not later than sixty days after receipt of the notice of taking.

D. In the event of any taking or less than the whole of the Demised Premises which does not result in a termination of this lease, Owner at its expense shall proceed with reasonable diligence to repair, alter and restore the remaining part of the Demised Premises to substantially its former condition to the extent the same may be feasible and so as to constitute a complete and tenable Demised Premises.

79. FORCE MAJEURE

Time for performance by Owner and Tenant of any term, provision or covenant of this lease shall be deemed extended by time lost due to delays resulting from acts of God, strikes, unavailability of materials, civil riots, floods, material or labor restrictions, by government authority, and any other cause not within the reasonable control of Owner. Financial inability of either party shall not constitute a cause for delay hereunder.

80. ADDITIONAL WORK

A. Tenant agrees to pay for additional work requested and completed. Owner has calculated such additional work to equal $15,787.00 which shall be repaid as per Exhibits C1 & C2, attached hereto, as additional rent. Owner shall repair or replace any current mechanical problems within the current demised space as 2/3/99, Exhibit C1 (example) is the amortization schedule as pertains to Suite 9 in the amount of $5,282.00. Exhibit C2 (example) is the amortization schedule as pertains to Suite 15 (The existing space), if Tenant desires to delay or cancel commencement of work on existing space than the amortization schedule shall be adjusted to reflect the shortened period of time to pay or the cancellation of the amount due in its entirety.

81. TERMINATION OPTION

Tenant shall have the right to terminate this lease ("Termination Option") after January 1, 2000 on the following terms and conditions:

1. Such right is conditioned upon there being no default as of the date of going of the

notice of termination as described infra,

2. At lease six months prior to the proposed termination date, Tenant gives written notice to Landlord of its exercise of the Termination Option (the "Termination Notice") which notice is accompanied by the Termination Fee as defined and calculated in paragraph 5 infra,

3. Tenant pays the next three months rent and all additional rent due under the lease in a timely manner and. prior to its vacating the premises, pays the three remaining months rent and additional rent due. For example, if the Termination Notice is given February 1, 2000 for a Termination date of August 1, 2000, then rent and additional rent shall be paid February 1, March 1 and April 1; three months rent and additional rent shall be paid April 20 and Tenant shall vacate on April 30, 2000,

4. The Tenant vacates and surrenders the Premises and leaves it in a broom-clean condition three months prior to the Termination Date. It is agreed and understood that Landlord may re-rent the demised premises commencing any time after the Tenant vacates the Premises.

5. The Termination Fee is the unamortized amount as of the date of the Termination Notice of the sum of the costs relating to tenant improvement work plus interest as shown on the attached schedule. For example, using the dates set forth in paragraph 3, the Termination Fee would be the "Principal Balance" on the attached schedule after the 13th payment, the February 1, 2000 payment, or $10,820.39;

6. If Tenant performs all of the foregoing conditions in a timely and satisfactory manner, Landlord and Tenant shall enter into a written Lease Termination Agreement reflecting the termination of this Lease as of the Termination Date.

Owner

BRIDGE STREET PROPERTIES, LLC

By: One Bridge Street Corporate Manager

By: /s/ William Thompson

William Thompson, President

Tenant

By: /s/ George Lind

EOS, Vice President

GUARANTY:

FOR VALUE RECEIVED, and in consideration for, and as an inducement to BRIDGE STREET PROPERTIES, LLC making within lease with Tenant the undersigned guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the covenants, conditions and agreements, therein provided to be performed and observed by Tenant, including the "Rules and Regulations" as therein provided, without requiring any notice of non-payment, non-performance, or non-observance, or proof, or notice, or demand, whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this agreement and the obligations of the guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Owner against Tenant of any of the rights or remedies reserved to Owner pursuant to the provisions of the within lease. The undersigned further covenants and agrees that this guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of this lease and during any period when Tenant is occupying the premise as "statutory tenant." As a further inducement to Owner to make this lease and in consideration thereof, Owner and the undersigned covenant and agree that in any action or proceeding brought by either Owner or the undersigned against the other on any matters whatsoever arising out of, under, or by virtue of the terms of this lease or of the guarantee that Owner and the undersigned shall and do hereby waive trial by jury.

Notwithstanding anything else contained herein, this guarantee shall be limited to _____ months rent and additional rent.

Tenant _____

Witness _____

EXHIBIT B

SCOPE OF WORK

I.

2.

3.

4.

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7.

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9.

10.

EXHIBIT C2 (EXAMPLE ONLY)

LOAN AMORTIZATION
EOS BUILD OUT

Key Figures		Inputs	
Annual Loan Payments	$ 3,898.32	Loan Principal Amount	$9,505.00
Monthly Payments	$ 324.86	Annual Interest Rate	14.00%
Interest in First Calendar Year	$ 815.59	Loan Period in Years	3
Interest Over Term of Loan	$ 2,189.96	Base Year of Loan	1999
Sum of All Payments	$11,694,96	Base Month of Loan	May

Payments In First 12 Months

Year	Mont	Beginning Balance	Payments	Principal	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
	May	$9,505.00	$ 324.86	$ 213.97	$ 110.89	$ 213.97	$ 110.89	$ 9,291
	Jun	9,291.03	324.86	216.46	108.40	430.43	219.29	9,075
	Jul	9,074.57	324.86	218.99	105.87	649.42	325.16	8,856
	Aug	8,855.58	324.86	221.54	103.32	870.96	428.48	8,634
	Sep	8,634.04	324.86	224.13	100.73	1,095.09	529.21	8,410
	Oct	8,409.91	324.86	226.74	98.12	1,321.83	627.33	8,183
	Nov	8,183.17	324.86	229.39	85.47	1,551.22	722.80	7,954
	Dec	7,953.78	324.86	232.07	92.79	1,783.29	815.59	7,722
2000	Jan	7,721.71	324.86	234.77	90.09	2,018.06	905.68	7,487
	Feb	7,486.94	324.86	237.51	87.35	2,255.57	993.03	7,249
	Mar	7,249.43	324.86	240.28	84.58	2,495.85	1,077.61	7,009
	Apr	7,009.15	324.86	243.09	81.77	2,738.95	1,159.38	6,766

YEARLY SCHEDULE OF BALANCES AND PAYMENTS

Year	Beginning Balance	Payments	Principal	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
2000	$7,721.71	$3,898.32	$ 3,005	893	$ 4,788.51	$ 1,708.69	$ 4,716
2001	4,718.49	3,898.32	3,454	444	8,242.59	2,152.93	1,262
2002	1,262.41	1,299.44	1,262	37	9,505.00	2,189.96	0

EXHIBIT C1 (EXAMPLE)

LOAN AMORTIZATION
EOS BUILD OUT

Key Figures		Inputs	
Annual Loan Payments	$ 2,576.40	Loan Principal Amount	$ 6,282.00
Monthly Payments	$ 214.70	Annual Interest Rate	14.00%
Interest in First Calendar Year	$ 539.03	Loan Period in Years	3
Interest Over Term of Loan	$ 1,447.20	Base Year of Loan	1999
Sum of All Payments	$ 7,729.20	Base Month of Loan	May

Payments In First 12 Months

Year	Mont	Beginning Balance	Payments	Principal	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
	May	$6,282.00	$ 214.70	$ 141.41	$ 73.29	$ 141.41	$ 73.29	$ 6,141
	Jun	6,140.59	214.70	143.06	71.64	287.47	144.93	5,998
	Jul	5,997.53	214.70	144.73	69.97	429.20	214.90	5,853
	Aug	5,852.80	214.70	146.42	68.28	575.62	283.18	5,706
	Sep	5,706.38	214.70	148.13	66.57	723.75	349.75	5,558
	Oct	5,558.25	214.70	149.85	64.85	873.60	414.60	5,408
	Nov	5,408.40	214.70	151.60	63.10	1,025.20	477.70	5,257
	Dec	5,256.60	214.70	153.37	61.33	1,178.57	539.03	5,103
2000	Jan	5,106.43	214.70	155.16	59.54	1,333.73	598.57	4,948
	Feb	4,948.27	214.70	156.97	57.73	1,490.70	656.30	4,791
	Mar	4,791.30	214.70	158.80	55.90	1,649.50	712.20	4,633
	Apr	4,632.50	214.70	160.65	54.05	1,810.15	766.25	4,472

YEARLY SCHEDULE OF BALANCES AND PAYMENTS

Year	Beginning Balance	Payments	Principal	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
2000	$5,103.43	$2,576.40	$ 1,986	590	$ 3,164.87	$ 1,129.13	$ 3,117
2001	3,117.13	2,576.40	2,283	294	5,447.68	1,422.72	834
2002	834.32	585.80	834	24	6,282.00	1,447.20	0

EXHIBIT 10.8

AMENDMENT TO ELECTRO-OPTICAL SCIENCES, INC.

The amendment is made the 17th day of May, 2001, by and between Bridge Street Properties, LLC a New York Corporation having an office at One Bridge Street, Irvington, New York 10533, and Electro-Optical Sciences, Inc. having an office at One Bridge Street, Irvington, New York 10533.

Witness:

Whereas, Owner (Bridge Street Properties, LLC) and Tenant (Electro-Optical Sciences, Inc.) Entered into a lease dated December 16th, 1998 of certain premises located at One Bridge Street, Irvington New York and

Whereas, the term of the lease set forth therein is extended for 18 Months commencing upon December 16th, 2001 and ending upon June 15th, 2003 and

Now, Therefore, the parties hereto agree as follows:

December 16, 2001 to December 15, 2002	$22.00		$81,796.00	$6,816.33
December 16, 2002 June 15, 2003	$23.10	5%	$85,885.80	$7,157.15

/s/	/s/ George J. Lind
Bridge Street Properties, LLC	Electro-Optical Sciences, Inc.
Member	Vice President
Title	Title
June 12, 2001	June 12, 2001
Date	Date

EXHIBIT 10.9

SECOND AMENDMENT TO ELECTRO-OPTICAL SCIENCES, INC. LEASE

This amendment is made the 19th day of June, 2003. by and between Bridge Street Properties. LLC, a New York Limited Liability Company having an office at One Bridge Street, Irvington, New York 10533, and Electro-Optical Sciences, Inc., a Corporation having an office at One Bridge Street, Irvington, New York 10533.

Witnesseth:

Whereas. Owner (Bridge Street Properties. LLC) and Tenant (Electro-Optical Sciences, Inc.) entered into a lease dated December 16th, 1998 of certain premises located at One Bridge Street, Irvington New York and

Whereas, the term of the lease set forth therein is three years commencing upon, December 16, 1998 and ending upon December 15, 2001 and

Now. Therefore, the parties hereto agree as follows:

1. The term set forth herein will be two years, fifteen days and commence June 16, 2003, and end on June 30, 2005.

2. The rate to be paid monthly / yearly will be as follows:

   See attached Lease Terms Proposal

3. Continuation of Lease Provisions: Except as amended herein, all other terms and conditions of the Lease shall remain in full force and effect for the duration of the Lease.

/s/ William Thompson	/s/ Marek Elbaum
- ----------	----------
Bridge Street Properties, LLC	Electro-Optical Sciences, Inc.
Member	Chief Operating Officer
- ----------	----------
Title	Title

EXHIBIT 10.10

AGREEMENT OF LEASE, made as of this 23 day of November, 2004 between

Bridge Street Properties LLC having an address at One Bridge Street, Irvington. New York 10533, hereinafter referred to as OWNER, and Electro-Optical Sciences, Inc., having an address at 3 West Main Street, Suite 201, Irvington, New York 10533, hereinafter referred to as TENANT,

WITNESSETH: Owner hereby leases to Tenant and Tenant hereby hires from Owner certain premises known as Suite 201 (the "Demised Premises" or the "Premises"), located on the second floor in the building known as 3 West Main Street] (the "building") in the Village of Irvington, State of New York 10533, for the term as set forth in Article 39 of the Lease Rider (or until such term shall sooner cease and expire as hereinafter provided) at an annual rental rate as set forth in Article 37 of the Lease Rider which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment on the execution hereof. Owner and Tenant agree, for the purposes of this Lease, that the rentable square footage area of the Demised Premises and the building shall be deemed to be [3,188 square feet subject to verification] and [24,600 square feet subject to verification], respectively.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent: 1. Tenant shall pay the rent as above and as hereinafter provided, except as may be set forth in this Lease.

Occupancy: 2. Tenant shall use and occupy the Demised Premises for general office use and for other uses ancillary thereto and for no other purpose.

Tenant: 3. Tenant shall make no changes in or to the demised Premises of any nature without Owner's prior written consent, not to be unreasonably withheld, conditioned or delayed. Landlord hereby approves the Plans for Tenant's initial Alterations to the Premises (the "Initial Alterations") set forth in Exhibit I attached hereto and made a part hereof. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to construct the Initial Alterations in accordance the approved Plans. Following the Initial Alterations, subject to the prior written consent of Owner, not to be unreasonably withheld, conditioned or delayed, and to the provisions of this article, Tenant at

Tenant's expense, may make alterations, installations, additions or improvements ("Alterations") which are nonstructural, and which do not adversely affect utility services or plumbing and electrical lines, in the Building by using contractors or mechanics first approved by Owner, which approval shall not be unreasonably withheld or delayed. Except as set forth herein Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general ability, personal and property damage insurance as Owner may reasonably require. Landlord represents and warrants that as of the date hereof, the Building has all necessary permits and approvals, including without limitation a Certificate of Occupancy, so that Tenant, upon completion of the Initial Alterations in compliance with applicable law, will be able to obtain all necessary permits and approvals for the Premises, including a certificate of occupancy for the Premises, so that upon completion of the Initial Alterations, Tenant can occupy the Premises for the purposes permitted by this Lease. If any mechanic's lien is filed against the Demised Premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days after Tenant receives notice thereof, at Tenant's expense, by filing the bond required by law. Tenant shall have the right to cause the Landlord to perform the Initial Alterations [at fixed price of $75,360] pursuant to a separate contract to be mutually agreed upon and executed by Landlord and Tenant (the "Initial Alterations Agreement"). In the event that Landlord or Landlord's contractor performs the Initial Alterations, Landlord, as part of such work, at its sole cost and expense shall be responsible for obtaining all required permits, approvals and certificates, including, without limitation, a certificate of occupancy for the Premises, before the Commencement Date. In addition, in such case Landlord shall be responsible for all mechanics liens. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the Demised Premises. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade

fixtures, but upon removal of any such from the premises, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and] repair any damage to the Demised Premises or the building due to such removal, normal wear and tear and casualty excepted. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to make interior non-structural alterations which do not adversely affect the building systems or structure, but only after receiving Owner's written consent, not to be unreasonably withheld or delayed.

Maintenance and Repairs:

4. (a) Tenant shall; throughout the term of this lease, take good care of the Demised Premises and the fixtures and appurtenances therein. Subject to the waiver of subrogation provisions, Tenant shall be responsible for all damage or injury to the Demised Premises or any other part of the building and the systems and equipment thereof, whether requiring structural or nonstructural repairs caused by or resulting from the wrongful intentional acts or negligence of Tenant, Tenant's subtenants, agents, employees, or licensees, unless caused by the act or omission or negligence of Owner, its agents, employees or contractors. Tenant shall also repair all damage to the building and the Demised Premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the Demised Premises for which Tenant is responsible, using contractors reasonably acceptable to Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible, shall be performed by Owner at the Tenant's reasonable expense, following Tenant's receipt of invoice and reasonable backup. Owner shall maintain in good working order and repair the, exterior and the structural portions of the building, including the structural portions of its Demised Premises, and the public portions of the building interior and the building plumbing, mechanical, electrical, heating and ventilating systems serving or passing through the Demised Premises. Tenant agrees to give prompt notice of any defective condition in the Premises for which Owner may be responsible hereunder after Tenant has actual knowledge thereof. Provided Landlord uses reasonable efforts to avoid interfering with Tenant's business, without any obligation to incur overtime, there shall be no allowance to

Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the Demised Premises or in and to the fixtures, appurtenances or equipment thereof. Except as set forth in this Lease, it is specifically agreed that Tenant shall not be entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract, except in connection with a major, sustained interruption of services, or to a material, uncorrected, Landlord default in performance of its obligations hereunder. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof. Notwithstanding anything to the contrary set forth herein: (a) Owner shall, at Owner's expense, maintain and keep in good repair the interior and exterior structural portions of the building, the roof, floor slabs, foundation and building systems and (b) Owner shall make all structural or extraordinary alterations and repairs to the building and the Demised Premises that are required to be made by any local, state or federal laws now or hereafter in effect ("Legal Requirements"), unless due to Tenant's particular manner or use of the Demised Premises and not to general office use. Landlord represents and warrants that on the date hereof, the building complies with all applicable Legal Requirements. Owner shall be solely responsible for the cost of any such alterations and repairs unless same are necessitated by Tenant's manner of use of the Demised Premises and by general office use, (b) (1) Owner hereby reserves the right at any time and from time to time to make alterations or additions to the building, the buildings adjoining the same and any other buildings located on Bridge Street owned by Owner (collectively, the "Bridge Street Properties" {"BSP"}). Owner further reserves the right at any time and from time to time to construct, or permit to construct, other buildings or improvements within the BSP. Such rights set forth in two preceding sentences include, without limitation, the right to construct additional stories on any such building or buildings, the right to build adjoining the same, the right to construct multi-level, elevated, underground and other parking facilities within the BSP and the right to erect in connection with any such construction or building temporary scaffolds and other aids to such construction or building. Landlord shall use reasonable efforts to minimize the noise and disturbance to Tenant's business in connection with such work. Owner shall

have the right at any time and from time to time to change the street address of the Demised Premises or to change the name of the building without incurring any liability to Tenant. Tenant acknowledges that the building. may be expanded to include multiple levels (the "Expansion") and that the Expansion may include office, retail and residential uses provided that no such retail use shall increase Tenant's Common Area maintenance charges. (ii) If an excavation shall be made upon land adjacent to the Demised Premises, Tenant shall permit the person(s) authorized to do such excavation to enter the Demised Premises for the purpose of doing such work as such person(s) deems necessary to preserve the building of which the Demised Premises is a part and to support the same by proper foundations without any claim for damages or indemnification from Owner or abatement of rental or other charges hereunder. (iii) There shall be no allowance to Tenant for a diminution in rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making any changes, alterations, additions, improvements, repairs or replacements in or to any portion of the building, the Demised Premises or the BSP, or in or to any fixtures, appurtenances or equipment therein.

Window Cleaning:

5. Tenant will not clean nor require, permit, suffer or allow any window in the Demised Premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire

6. Prior to the commencement of the lease term, if Tenant is then in possession (pursuant to an agreement whereby Landlord has made Tenant responsible for the build-out), and at all times thereafter, Insurance, Floor Loads: but subject to the provisions of this Lease, Tenant at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer and all regulations of the New York State Board of fire Underwriters, Insurance Service office with respect to the Demised Premises arising out of tenant's unique manner of use thereof (and not to general office use), or with respect to the building if arising out of tenant's manner of use of the premises or the building. Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the

Demised Premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to Owner's satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorney's fees, by cash deposit or by surety bond in an amount and in a company reasonably satisfactory to Owner, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense or constitute a default under any lease or mortgage under which Owner may be obligated, or cause the Demised Premises or any part thereof to be condemned or subject to an official order that it be vacated. Tenant shall not do or permit any act or thing to be done in or to the Demised Premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner with respect to the Demised Premises or the building of which the Demised Premises form a part, or which shall or might subject Owner to any liability or responsibility to any person or for property damage. Tenant shall not keep anything in the Demised Premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article and if by reason of such failure the fire insurance rate shall, at the beginning of this lease, or at any time thereafter, be higher than it Otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. Landlord represents and warrants that Tenant's use of the Premises for the permitted use shall not violate the provisions of this Section or cause insurance rates to increase. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make - up" of rate for the building or Demised Premises issued by the New York Fire Insurance Exchange, or other body making f11'e insurance rates applicable to said premises' shall be conclusive evidence of

the facts therein stated and of the several Items and charges in the fire insurance rates then applicable to said premises. Tenant shall only be liable for such increases if Tenant's use of the Premises for uses other than the permitted use is the sole and direct cause of such increase. Tenant shall not place a load upon any Door of the Demised Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of' all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's reasonable judgment, to absorb and prevent vibration, noise and annoyance.

Subordination:

7. Subject to the provisions below, this lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which Demised Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. Landlord shall make reasonable efforts to provide Tenant with an SNDA reasonably satisfactory to Tenant. This clause shall be self. operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the Demised Premises are a part. In confirmation of such subordination, Tenant shall execute any certificate that Owner may reasonably request that is reasonably satisfactory to Tenant within five (5) days after written demand.

Property Loss Damage Reimbursement Indemnity:

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to, employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the omissions or negligence of Owner, its agents, servants contractors or employees. Unless due to their omissions or negligence, Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. If at any time any windows of the Demised Premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage

Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, or licensees, of any covenant or condition of this lease, or the negligence or wrongful acts of the Tenant, Tenant's agents, contractors, employees, or licensees; provided, however, that Tenant shall not be responsible for claims and the like not covered by insurance if Owner has not maintained in force insurance with limits at least equal to the amount of insurance the Owner is required to carry under any mortgage or the amount that a reasonably prudent landlord of a class a bonding in the greater New York suburban area should have carried. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld, conditioned or delayed. The attorney that Tenant is required to use by its insurer shall be deemed reasonably acceptable to the Owner. Tenant shall be entitled, at its expense, to defend its interest in any such litigation, and Owner shall not compromise the action without Tenant's prior written consent. Owner shall indemnify and save harmless Tenant against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Tenant shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Owner, Owner's agents, contractors, employees, or licensees, of any covenant or condition of this lease, or the negligence or wrongful acts of the Owner, Owner's agents, contractors, employees, or licensees. The waiver of subrogation provided in Article 9, below, shall be applicable as appropriate in order to carry out the intent of the provisions of this Article.

Destruction, Fire and Other Casualty:

9. (a) If the Demised Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt notice except thereof to Owner and this lease shall continue in foil as hereinafter set forth. (b) If the Demised Premises are

partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the Demised Premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the Demised Premises are rendered wholly unusable or (whether or not the Demised Premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to the date of such casualty, and any payments of rent made by Tenant which were on account of any period subsequent to the date of such casualty shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume [fifteen (15) days] after written notice from Owner that the premises are substantially ready for Tenant's occupancy. Notwithstanding the foregoing, if the Premises are not fully restored within 360 days, at Tenant's election this lease may immediately be terminated. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fare or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the

other party for recovery for loss or damage resulting from fire or other casualty, and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasers' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Premises Domain:

10. If the whole or any part of the Demised Premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of this lease to remove such property, trade fixtures and equipment at the end of the term, and provided further such claim does not reduce Owner's award.

Assignment Mortgage, and Etc.:

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the Demised Premises or any part thereof to be used by others, without the prior written consent of Owner in each instance, which consent shall not be unreasonably withheld conditioned or delayed. If this lease be assigned, or if the Demised

Premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current:

12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the amounts set forth in this Lease for Tenant's use and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will exceed the amounts set forth in this Lease for Tenant's use Unless due to Landlord's omissions or negligence, the change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Right Premises:

13. (a) Owner or Owner's agents shall have the right (but shall not be obligated) to enter the Demised Premises in any emergency at any time, and, at other reasonable times upon reasonable prior notice and without interfering with Tenant's business, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to the Demised Premises or to any other portion of the building or which Owner may elect to perform. Provided Owner does not interfere with Tenant's business and ensures that the confidentiality of Tenant's business is maintained, and provided that Tenant receives reasonable prior notice and has the right to have a representative of Tenant present, Tenant shall permit Owner to show same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the premises, during an emergency, Owner or Owner's agents may enter the same whenever such entry may be necessary [or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property and the

confidentiality of Tenant's business, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the Demised Premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. (b) (i) Owner shall have the exclusive right to use and obtain access to all or any part of the roof, provided that Tenant shall be entitled to erect one or two small satellite antennas or antennas for wireless telecom or similar communication with other space leased by Tenant within BSP (in a location of Owner's choosing, and provided that no roof penetration shall be required, exterior side and rear walls of the Demised Premises for any purpose, including but not limited to, erecting signs or other structures on or over all or any part of the same, erecting scaffolds and other aids to the construction and installation of the same, and installing, maintaining, using, repairing, and replacing pipes, ducts, conduits and wires leading through, to or from the Demised Premises and serving other parts of the BSP in locations which do not materially interfere with Tenant's use of the Demised Premises. Tenant shall have no right whatsoever in the exterior of exterior walls or the roof (excepting satellite telecom as set forth above) of the Demised Premises. (ii) Tenant shall permit Owner to install, use and maintain pipes, ducts and conduits within or through the Demised Premises, or through the walls, columns and ceilings therein, provided that the installation work is performed at such times and by such methods as will not materially interfere with Tenant's use and occupancy of the Demised Premises. Where access doors are required for [mechanical trades in or adjacent to the Demised Premises, Owner shall furnish and install such access doors and confine their location, wherever practical, .to closets, coat rooms, toilet rooms, corridors and kitchen or pantry rooms. Notwithstanding the foregoing, in performing any work in or about the Demised Premises, Owner shall use all reasonable efforts not to disturb Tenant's business operations, including performing work after hours if practicable. In no event shall any work or renovations by Owner result in a reduction of the size of the Demised Premises. Landlord shall repair any damage to the Demised Premises, including any finish work resulting from any such work or renovations.

Vault, Vault

en-Space Area:

14. No Vaults, vault space or area, whether or, not closed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blueprint or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy:

15. Tenant will not at any time use or occupy the Demised Premises in violation of the certificate of occupancy issued for the building of which the Demised Premises are a part , it being understood and agreed that the use of the Premises for the permitted use will not violate the certificate of occupancy. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any, and subject to the provisions of this Lease (including the provisions that relate to Legal Requirements and Hazardous Substances) and subject to latent defects. Notwithstanding the foregoing, Owner represents that (i) there is a valid Certificate of Occupancy covering the building, including the Demised Premises, which permits the Permitted Use in the Demised P remises (subject to the requirement that any new construction may require its own new certificate of occupancy or completion) and (ii) there are no violations of Legal Requirements affecting the Demised Premises as of the date hereof.

Bankruptcy:

16. (a) Anything elsewhere in this lease to the contrary not withstanding, this lease may be canceled by Owner by the sending of a written notice to Tenant within a reasonable time after the happening of anyone or more of the following events: (i) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (ii) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be

entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease. (b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the Demised Premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the Demised Premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be relet by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re -letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or role of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default:

17. (a) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or If any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the Demised Premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 235 of Title II of the U.S. Code (bankruptcy code); in anyone or more of such events, upon Owner serving a written five (5) days notice in the case of monetary defaults, and a written ten (10) day notice in the case of non-monetary defaults, and upon the expiration of said five (5) days or ten (10) days, as the case may be, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day or ten (10) day period,

and if Tenant shall not have diligently commenced curing such default within such five (5) day or ten (10) day period, and shall not thereafter with reasonable diligence and in good faith, provided. (b) If the notice provided for in (a) hereof shall have been given, and the term shall expire as aforesaid; or If Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required which default shall not be cured within ten (10) days after notice; then and in any of such events Owner may with notice, re-enter the Demised Premises either by legal means, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of Demised Premises and remove their effects and hold the premises as if this lease had not been made

Remedies of Owner and otherwise Waiver of paid Redemption:

18. In case of any default, reentry, and expiration and/or dispossess summary, proceedings or by (a) the rent shall become due thereupon and be up to the time of such reentry, and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease (provided Tenant shall not be liable for any rental obligations in excess of its obligations under this Lease), and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such reasonable expenses as Owner may pay in connection with re-letting, such as reasonable legal expenses and attorneys' fees, brokerage, advertising and for keeping the Demised Premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit

brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the Demised Premises in good order or preparing the same for re-rental may, at Owner's option, make such reasonable alterations, repairs, replacements, and/or decorations in the Demised Premises as Owner, in Owner's sole reasonable judgment, considers advisable and necessary for the purpose of re-letting the Demised Premises, and the making of such reasonable alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the Demised Premises, or in the event that the Demised Premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. Notwithstanding the preceding, Landlord shall use reasonable efforts to relet the Premises and mitigate the damages. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at-law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude the person entitled to that remedy from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of Demised Premises, by reason of the default beyond any applicable grace or notice periods by Tenant of any of the covenants and conditions of this lease.

Fees and Expenses:

19. If Tenant shall default, beyond any applicable grace and cure period in the observance or performance of any term or covenant on Tenant's part to be observed or performed under this Lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and with notice perform the obligation of Tenant thereunder. If either party, in connection with the foregoing or in connection with any default beyond any applicable grace or notice period by the other party in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any action or proceeding, then the prevailing party

will be reimbursed by the other party for such sums so paid or obligations incurred with Interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within rendition thirty (30) days after notice thereof to Tenant (with reasonable backup) of any bill or statement to Tenant therefor. [If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by the prevailing party as damages.

Building Alterations and Management:

20. 0wner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known, provided any such changes described in this Article 20 shall not adversely affect Tenant's access or the rights and privileges granted under this Lease. Owner shall use reasonable efforts to avoid interfering with Tenant's business, and shall give reasonable prior notice to Tenant, prior to making building alterations that may affect Tenant. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of Inconvenience, annoyance or injury to business arising from Owner or other Tenants making any repairs in the building or any such alterations, additions and improvements that are completed within a reasonably short period of time. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such reasonable controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem reasonably necessary for the security of the building and its occupants.

No Representations by Owner:

21. Neither Owner nor Owner's agents have by any representations or promises with respect to physical condition of the building, the land upon which It is erected or the Demised Premises, the rents, leases, expenses of operation, the actual dimensions of the Demised Premises or the building or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the Demised Premises and is thoroughly acquainted with its condition and, subject to the provisions of

this Lease, agrees to take the same "as is" as of the date hereof and subject to the Landlord's compliance with its obligations as set forth in this Lease, and the Premises being in the condition required by this Lease, acknowledges that the taking of possession of the Demised Premises by Tenant shall be conclusive evidence that the said premises were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Term:

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the Demised Premises, broom clean, in good order and condition, ordinary wear and damages and casualty accepted and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment:

23. Owner covenants and agrees with Tenant that upon provided Tenant is not in default beyond any applicable grace or notice periods, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession:

24. If Owner is unable to give possession of the Demised Premises on the date of the commencement of the term hereof, because of the holding over or retention of possession of any tenant, undertenant or occupants or if the Demised Premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same

be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession) until after Owner shall have given Tenant written notice that the premises are substantially ready for Tenant's occupancy. Notwithstanding the foregoing, if Owner is unable to deliver possession of the premises by April 1, 2005, Tenant shall have the right to terminate this lease. If Permission is given to Tenant to enter into the possession of the Demised Premises or to occupy premises other than the Demised Premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except as to the covenant to pay rent and additional rent. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223 -a of the New York Real Property Law. Notwithstanding the foregoing, Owner shall give possession within 90 days after a fully executed copy of this lease is exchanged between the parties, subject, however, to the obligation of the Tenant to perform any work it is to perform in a timely manner.

No Waiver:

25. The failure of Owner or Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. Owner shall enforce all such Rules and Regulations in a uniform and non-discriminatory manner. The receipt by Owner and the payment by Tenant of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner or Tenant unless such waiver be in writing signed by the party granting the waiver. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid

unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury:

26. It is mutually agreed by and between and Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually an summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4.

Inability to Perform:

27. Except as otherwise set forth to the contrary elsewhere in this Lease, this Lease and the obligation of Tenant to pay rent here under, and both parties' obligations to perform all of the other covenants and agreements here under on their respective parts to be performed shall in no wise be affected, impaired or excused because the other party is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or implied to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

Bills and Bill Notices:

28. Except as otherwise in this lease provided, a statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified man addressed to Tenant at the building of which the Demised Premises form a part or at the

last known residence address or business address of Tenant addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant by receipted delivery, or if sent by courier, one business day after delivery to such courier or if mailed, upon receipt or rejection of such notice as herein provided. Any notice by Tenant to Owner must be given to Owner personally or served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice. Notwithstanding the foregoing: (i) notices shall be deemed given on the day of delivery, or, if delivery is refused, on the first business day on which delivery is attempted, and (ii) in addition to the notice methods specified above, notices given to or by Owner or Tenant may be given by hand or by courier service (such as Federal Express or Airborne) that provides a signed receipt. Notices shall be given to Owner and Tenant at their addresses set forth in Rider Paragraph 67.

Services Expenses:

29. Owner shall provide at Owners sole cost and expense: (a) heat to the Demised Premises when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) water for ordinary, drinking and kitchen/pantry and lavatory purposes, but if Tenant uses or consumes water for any other purposes (of which fact Owner in its reasonable discretion shall be the judge), Owner may install a water meter at Owner's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed for other purposes only, as shown on said meter as additional rent thirty days after bills and reasonable backup are rendered; (d) Air conditioning/cooling will be furnished to tenant from May 15th through September 30th or otherwise as the design of the Building and its unique heating/cooling system requires, on business days (Mondays through Fridays, holidays excepted) from 8:00 a.m. to 6:00 p.m., and Saturdays from 8 a.m. to 1 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/cooling is being furnished as aforesaid. If Tenant requires air conditioning/cooling or ventilation for more extended hours or on Sundays or on holidays, as defined under Owner's contract with Operating Engineers Local 94-94A, Owner will furnish the same at Tenant's expense. (e) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning, power systems or cleaning or other services, if any, when necessary by reason of accident or for repairs, alterations, replacements

or improvements necessary or desirable in the judgment of Owner for as long as may be reasonably required by reason thereof, provided, however, that Owner shall provide Tenant with' reasonable notice of any such cessation of utilities to the extent reasonably possible, and provided that this provision is not intended to authorize a major, sustained interruption of services. If the building of which the Demised Premises are a part supplies manually operated elevator service, Owner at, any time may substitute automatic control elevator service and upon ten days' written notice to Tenant, proceed with alterations necessary therefor without in any wise affecting this lease or the obligation of Tenant hereunder. The same shall be done with a minimum of inconvenience to Tenant and Owner shall pursue the alteration with due diligence. At least one elevator shall be available at all times.

Captions: 30. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions: 31. The term "office", or "offices", wherever used in this lease, shall not be construed to mean premises used as a store or stores, for the sale or display, at any time, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purposes. The term "Owner" means a landlord or lessor, and as used in this lease means only the owner, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the Demised Premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder for obligations arising both before and after the transfer. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as

used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 29 hereof), Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

Adjacent Excavation Shoring: 32. If an excavation shall be made upon land adjacent to the Demised Premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license an opportunity at reasonable times on reasonable notice to enter upon the Demised Premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which Demised Premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

Rules and Regulations: 33. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Roles and Regulations and such other and further reasonable Roles and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in [elect] the manner set forth in Article 28 and Rider Paragraph 67. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within [ten (10) days] after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall not enforce the Rules and Regulations in a discriminatory manner. In case of a conflict between the Rules and Regulations and the other provisions of this Lease, the other provisions shall control.

Security:

34. Tenant has deposited with Owner the sum of $17,002.67 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the Demised Premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the Demised Premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel upon Certificate:

35. Tenant, at any time, and from time to time, at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Successors and Assigns: 36. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

SEE RIDER ATTACHED HERETO AND INCORPORATED HEREIN

In Witness Whereof. Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

- ----------

BRIDGE STREET PROPERTIES, LLC

By: /s/

Managing Manager

Witness for Tenant:

By:

Electro-Optical Sciences, Inc.

By: /s/ William R. Bronner

CORPORATE OWNER
STATE OF NEW YORK, SS.:
County of

On this day of , 19 , before me

Personal came
to me known, who being by me duly sworn, did depose and say that he resides

in

that he is the of

the corporation described in and which executed the foregoing instrument, as OWNER;, and that he signed his name thereto by order of the board of directors of the corporation.

CORPORATE OWNER
STATE OF NEW YORK, SS.:
County of

On this day of , 19 , before me

Personal came
to me known, who being by me duly sworn, did depose and say that he resides

in

that he is the of

the corporation described in and which executed the foregoing instrument, as OWNER;, and that he signed his name thereto by order of the board of directors.

- ----------

INDIVIDUAL OWNER
STATE OF NEW YORK, SS.:
County of

On this day of 19 , before me personally came

to me known and known to me to be the individual described in and who, as Owner, executed the foregoing instrument and acknowledged to me that he executed same.

INDIVIDUAL OWNER
STATE OF NEW YORK, SS.:
County of

On this day of 19 , before me personally came

to me known and known to me to be the individual described in and who, as Tenant, executed the foregoing instrument and acknowledged to me that he executed same.

IMPORTANT PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 33.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or other used for any purpose other than for ingress or egress from the Demised Premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public ball of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any band trucks, except those equipped with rubber tires and side guards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be bung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the Demised Premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Demised Premises, or permit or suffer the Demised Premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein. nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No Awnings or other projections will be attached to the outside walls of the building without prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall he exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the Demised Premises or the building or on the inside of the Demised Premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the Demised Premises or the building of which they form a part. Except as the parties may agree as part

of the construction agreement, no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Demised Premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his/her Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass to the building signed by the Owner. Owner will furnish passes to persons for whom any Tenant requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the Demised Premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors to permeate in or emanate from the Demised Premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Owner's prior written consent. If such safe,

machinery, equipment; bulky matter or fixtures requires special handling, all work in connection therewith shall comply with all laws and regulations applicable thereto and shall be done during such hours as Owner may designate.

RIDER TO LEASE
Between
BRIDGE STREET PROPERTIES, LLC, Owner
and
'ELECTRO-OPTICAL SCIENCES, INC., Tenant

In the event any conflict between any of the provisions of this Rider and any of the terms of the appended lease (including the Rules and Regulations), such conflict will be resolved in every instance in favor of this Rider.

37. BASE RENT

Commencing as of the Lease Commencement Date, Tenant shall pay to Owner the annual base rent, In equal monthly installments on the first day of each month, as follows:

	Annual	Monthly
Years 1 and 2	$102,016.00	$ 8,501.33
Years 3 and 4	$108,392.00	$ 9,032.67
Years 5 and 6	$114,768.00	$ 9,564.00

38. CONSTRUCTION

A. OWNER'S WORK - EXHIBIT B

i. As soon as practicable, but in any case within 15 days after execution of this lease, Owner will commence and within 60 days thereafter will use reasonable efforts to complete the work set forth in Exhibit B annexed hereto and made a part hereof ("Owner's Work"). The scope and detail of Owner's Work shall be limited solely to terms set forth in Exhibit B. Owner's Work shall be performed in a good, safe and workman-like manner and in accordance with all Legal Requirements, subject to the provisions of Paragraph #78 (Force Majeure) and any of Tenant's Work interfering with Owner's Work. However, Owner shall not be liable to Tenant for damages of any kind resulting from Owner's delay in delivering possession of the premises to Tenant, for whatever reason, provided that Owner is able to deliver possession by or before April 1, 2004.

ii. The term "Substantial Completion" or "Substantially Complete" shall mean that, with the exception of minor punch list items that do not interfere with Tenant's Work or with the use and occupancy of the Premises, Owner's Work shall have been completed in accordance with the specifications set forth herein and Owner shall have obtained a temporary or permanent certificate of occupancy with respect thereto, if required. OWNER WILL GIVE TENANT AT LEAST FIVE DAYS NOTICE OF SUBSTANTIAL COMPLETION OF OWNER'S WORK AND THE PARTIES SHALL SCHEDULE A WALK-THROUGH UPON ISSUANCE OF OWNER'S

NOTICE. IMMEDIATELY FOLLOWING THE WALK-THROUGH, THE PARTIES SHALL AGREE UPON AND EXECUTE A "PUNCH LIST" OF ITEMS NECESSARY OR DESIRABLE TO COMPLETE OWNER'S WORK, ALONG WITH A SCHEDULE OF TIME WITHIN WHICH TO COMPLETE SUCH "PUNCH LIST" ITEMS, WHICH SCHEDULE SHALL NOT EXCEED 30 DAYS EXCEPT TO THE EXTENT ANY SUCH PUNCH LIST ITEM REQUIRES MATERIALS THAT WILL NOT BE AVAILABLE WITHIN SUCH TIME.

iii. Except for the completion of the aforementioned punch list items, Tenant's occupancy of the premises shall be deemed to be its acknowledgment that it has examined and accepts the Demised Premises in "as is" condition on the Lease Commencement Date, latent defects, hazardous substances, and Owner's obligations under the lease excepted. Further, Tenant agrees that Owner shall have no obligation to perform any additional work, supply any materials, incur any expense or make any additional improvements, installations or alterations to the Demised Premises, beyond Owner's Work, in order to prepare the Demised Premises for Tenant's occupancy and use.

B. TENANT'S WORK

i. Subject to the provisions of Articles 3, 6l and 64 hereof, Tenant shall perform or cause the performance of Alterations in and to the Demised Premises to prepare same for Tenant's occupancy thereof including, but not limited to, installation of all interior plumbing, and lighting fixtures, ceiling treatments, interior partitions, window treatments, floor and wall coverings, distribution of electric (Owner shall provide 6 watts per rentable square foot connected load exclusive of HVAC) and distribution of HVAC (Owner shall provide perimeter HVAC) ("Tenant's Initial Alteration") and all furniture, furnishings and equipment to adapt the Premises for the Permitted Use. All materials used in connection with Tenant's Initial Alteration shall be new and first quality. Tenant shall submit to Owner detailed architectural, mechanical and engineering plans and specifications showing Tenant's Initial Alteration, which shall be prepared by Tenant, at Tenant's expense, and to the extent not pre-approved shall be submitted to Owner on or before ten days after the date hereof for Owner's approval. The plans and specifications, as approved by Owner, are hereinafter referred to as the "Final Plans", and shall be deemed an authorization by Owner for Tenant to proceed after the Commencement Date or such earlier date as Owner may permit Tenant to have access to the Premises for Tenant's Initial Alteration, which shall be performed by Owner (pursuant to Paragraph ii below) or by contractors reasonably approved by Owner and otherwise in accordance with the terms of this Lease. The approval of the Final Plans by Owner shall not be deemed to create any liability on the part of Owner with respect to the design or specifications set forth in the Final Plans or an acknowledgment on the part of the Owner that the Final Plans are in compliance with all applicable governmental laws, rules and regulations.

ii. Within 30 days after approval by Owner of the Final Plans, and providing that Tenant has not already engaged Owner to perform the work, Tenant

shall deliver to Owner a proposal by one or more contractors reasonably approved by Owner. Owner shall have the right, by notice given to Tenant within 30 days after receipt of such proposal, to elect to perform Tenant's Initial Alteration upon the terms set forth in Contractor's Proposal. Upon such election, Owner and Tenant shall enter into an agreement for the performance of Tenant's Initial Alteration upon such terms.

iii. In the event that Owner elects to perform Tenant's Initial Alteration, Owner shall pay a portion of the total construction cost thereof (including only hard construction costs, materials incorporated in Tenant's Initial Alteration, filing and other government al fees and charges, but not including costs of furniture, furnishings and decorative items) (the "Initial Alteration Cost") equal to Owner's Contribution (as defined below), as verified by Tenant through provision of receipted invoices (or such other proof of payment as Tenant sha1l reasonably require).

iv. In the event that Owner does not elect to perform Tenant's Initial Alteration, Owner shall reimburse Tenant for a portion of the cost of Tenant's Initial Alteration, as approved by Owner and made by Tenant, in the amount of Owner's Contribution. Provided this Lease is then in full force and effect and Tenant is not in default hereunder beyond any applicable notice and grace period and Tenant has opened the Premises for business to the public, Owner shall pay Owner's Contribution to Tenant, less any amounts deducted therefrom pursuant to Subsection (v), within thirty (30) days after satisfactory completion of Tenant's Initial Alteration and submission by Tenant of (i) "as-built" drawings showing Tenant's Initial Alteration, (ii) a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices (or such other proof of payment as Owner shall reasonably require) showing payment thereof, (iii) a written statement from Tenant's architect or engineer that the work described on any such invoices has been completed in accordance with the Pinal Plans, (iv) all required AIA forms, supporting final lien waivers and releases executed by the general contractor and all major subcontractors employed by Tenant in connection with Tenant's Initial Alteration, (v) a copy of a certificate of occupancy or amended certificate of occupancy required in respect of the Premises.

v. Tenant shall pay all of Owner's reasonable out-of-pocket costs incurred in connection with Tenant's Initial Alteration, consisting of up to $500 for each engineering, or other outside consulting fee incurred by or on behalf of Owner for the review and approval of Tenant's Final Plans and for approval of construction of Tenant's Initial Alteration. Owner, at its option, may deduct such costs from Owner's Contribution.

vi. For the purposes of this Lease, "Owner's Contribution" shall mean $63,760 [$20.00 per square foot] [subject to verification of square footage], at Tenant's election to be applied against the cost of construction (if performed by Owner) or against Rent otherwise owing.

39. COMMENCEMENT DATE AND TERM OF LEASE

A. THE COMMENCEMENT DATE OF THIS LEASE (THE "LEASE COMMENCEMENT DATE") SHALL BE THE DATE ON WHICH THE DEMISED PREMISES IS DELIVERED TO TENANT IN CONDITION FOR OCCUPANCY, WITH OWNER'S WORK SUBSTANTIALLY COMPLETE, WITH ONLY PUNCH LIST ITEMS REMAINING TO BE COMPLETED. WITHIN TEN (10) DAYS AFTER OWNER'S AND TENANT'S DETERMINATION OF THE LEASE COMMENCEMENT DATE, AND AFTER AGREEMENT ON THE FINAL PUNCH LIST AFTER THE FINAL WALK-THROUGH, TENANT SHA1L EXECUTE A NOTICE CONFIRMING SUCH DATE, BUT THE FAILURE OF OWNER OR TENANT TO EXECUTE SUCH INSTRUMENT SHALL NOT AFFECT THE MUTUALLY-AGREED-UPON DETERMINATION OF THE LEASE COMMENCEMENT DATE. THE TERM OF THIS LEASE SHALL EXPIRE ON THE LAST DAY OF THE MONTH WHICH OCCURS SIX YEAR(s) AFTER THE LEASE COMMENCEMENT DATE (THE "LEASE EXPIRATION DATE"), UNLESS SUCH TERM SHALL SOONER EXPIRE OR BE EXTENDED AS IN THIS LEASE PROVIDED.

B. THE TENANT'S OBLIGATION TO PAY THE ANNUAL BASE RENT PROVIDED FOR HEREIN SHALL COMMENCE ON THE LEASE COMMENCEMENT DATE AND END ON THE LEASE EXPIRATION DATE.

40. REAL ESTATE TAX ESCALATIONS

A. FOR THE PURPOSES OF THIS SECTION 40, OWNER AND TENANT AGREE AS FOLLOWS:

1. "Base Tax Amount" shall mean the Village Taxes for the Village of Irvington for the 2004/05 Tax Year, the Town/County Tax for the Town of Greenburgh and Westchester County for the 2004 Tax Year and the School Taxes for the Irvington School District for the fiscal year 2004/05 Tax Year, adjusted as appropriate for full assessment.

2. "Taxes" shall mean the amount of all real estate taxes, fees and any assessments and governmental charges levied, whether by federal, state, county, municipal, or other taxing districts or authorities presently or hereafter created, assessed against BSP (Tax Lots Sec. 4, Sheet 3, Lots PI02. P105, PI07, P109 and P4B) and any other taxes, fees, charges or assessments attributable to the Property. If and to the extent that due to a change in the method of taxation, any other tax or charge shall be a substitute for or supplement to any of the foregoing, then all such items shall be included within the term Taxes for the purposes of this Lease. All actual expenses reasonably paid in contesting the validity or amount of any Taxes or in obtaining a refund of Taxes shall be considered as part of the Taxes for the year in which paid, but not to exceed the amount saved thereby.

3. "Tax Year" shall mean the period(s) adopted by any applicable governmental authorities as its fiscal year for real estate tax purposes.

4. "Owner's Tax Statement" shall mean an instrument or invoice setting forth or adjusting Tenant's Tax Contribution (as defined in Subparagraph C hereof) or any installment thereof for a specified Tax Year pursuant to this Paragraph 39.

5. "Tenant's Share" shall mean 1.55%.

B. Tenant agrees to pay in addition to base rent as additional rent during the term of this lease and any and all renewals, extensions, and modifications hereof an amount ("Tenant's Tax Contribution") equal to Tenant's Share of the amount by which the Taxes in any Tax Year exceed the Base Tax Amount. All such payments shall be appropriately pro-rated for any partial tax year occurring during the term hereof.

C. Tenant shall pay Owner on the first day of each calendar month during the term and amount equal to one-twelfth (1/12th) of the amount Owner reasonably estimates from time to time as necessary to pay Tenant's Tax Contribution. Such estimates shall be based upon actual tax bills to the extent available and Owner's reasonable estimate of projected increases in the amount of the. Any such estimate shall be subject to adjustment when the actual amount of Real Estate Taxes shall be determined, and payment by Tenant to Owner of any deficiency, or payment by Owner to Tenant for any overpayment, shall be made within 20 days after delivery by Owner to Tenant of Owner's Tax Statement. Only Owner shall be eligible to institute or prosecute a tax certiorari proceedings to reduce the assessed valuation of the premises.

41. COMMON AREA MAINTENANCE ESCALATIONS.

A. For the purposes of this Section 41, Owner and Tenant agree as follows:

(1) "Common Area Maintenance Expenses" shall mean any or all reasonable, actual, and competitive expenses paid by Owner in connection with the operation, management, maintenance, cleaning, and repair in, of and to the buildings and grounds included in BSP including, without limitation the following: (i) costs of repairing, operating, lighting, cleaning painting, decorating all exterior and common areas of the BSP (including, without limitation, all floors, roofs, elevators, walls, stairs, signs, landscaping and shrubbery, parking areas and sidewalks, (ii) salaries, wages (including all vacation and disability payments, insurance, retirement benefits and other benefits and similar expenses) of employees which Owner may engage in the on-site operation and maintenance of BSP up to the level of Building Manager; (iii) payroll taxes, workmen's compensation; (iv) water waste line maintenance (including sewer rental) furnished to BSP, together with any taxes on any such utilities .provided that such taxes are not payable under any other provision of this lease; (v) the cost of all insurance carried by Owner applicable to BSP (including, without limitation, primary and excess liability, and further including vehicle insurance (only for vehicles dedicated to BSP), fire and extended coverage, vandalism and all broad form coverage including, without limitation, riot, strike, and war risk insurance, flood insurance, boiler insurance, plate glass insurance and sign insurance); (vi) the cost of all building and cleaning supplies; (vii) the cost of all reasonable and customary charges for service contracts with independent contractors for all areas of the BSP; (viii) the cost of landscaping, site maintenance and snow removal; (viii) sales and use taxes not payable under another provision of this lease; (ix) security systems, security personnel; and any other costs and expenses in connection with the operation, maintenance and repair of BSP.

(2) "Base Expense Year" shall mean calendar year 2005, adjusted for full occupancy and for any extra costs of start up and systems under warranty.

(3) "Owner's Expense Statement" shall mean an instrument showing in reasonable detail Tenant's Expense Payment for the previous Lease Year, along with a reconciliation of estimated payments made by Tenant as compared to the actual Tenant's Expense Contribution for such Lease Year, plus reasonable backup.

(4) "Tenant's Expense Share" shall mean 1.55 % [PLEASE EXPLAIN].

B. Tenant agrees to pay in addition to base rent as additional rent during the term of this lease and any and all renewals, extensions, and modifications hereof an amount, an amount equal to Tenant's Expense Share of the amount by which the Common Area Maintenance Expenses in any Lease Year exceed the Common Area Maintenance Expenses for the Base Expense Year ("Tenant's Expense Contribution").

C. Tenant shall pay Owner on the first day of each calendar month during the term hereof, together with the monthly installment of Base Rent, the amount estimated by Owner to be one-twelfth (l/12th) of Tenant's Expense Contribution, as such estimate may be adjusted from time to time upon written notice to Tenant. Any such adjusted estimates shall become effective as of the next monthly payment of Tenant's Expense Contribution.

D. Following the end of each Lease Year, Owner will submit to Tenant Owner's Expense Statement for such Lease Year. Within thirty (30) days after receipt of Owner's Expense Statement, Tenant shall pay to Owner any additional amounts owed to Owner as shown on Owner's Expense Statement. Every Owner's Expense Statement given by Owner to Tenant as set forth herein shall be conclusive and binding upon Tenant unless (a) within 30 days after the receipt of such statement, Tenant shall notify Owner that it disputes the correctness thereof, specifying the particular respects in which such statement is claimed to be incorrect. and (b) if such dispute shall not have been settled by agreement, Tenant shall have the right to conduct an audit using an outside auditor reasonably acceptable to Owner. If the result of such audit fails to resolve the dispute, either party may submit the dispute to arbitration before a panel of three accountants, one chosen by the Owner, who may by the Owner's regular accountants, one by the Tenant and a third chosen by the two previously appointed accountants. Pending the determination of such dispute by agreement or arbitration as aforesaid, Tenant shall, within fifteen (15) days after receipt of the Owner's Expense Statement, pay additional rent in accordance with such statement and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Owner shall forthwith credit against future payments of Tenant's Expense Contribution (or if no further payments are due from Tenant, shall pay to Tenant) the amount of Tenant's overpayment of rents resulting from compliance with the Common Area Maintenance Expense Statement. If the dispute shall be determined in Owner's favor, Tenant shall pay all amounts owed to Owner within twenty (20) days after such determination.

E. If during all or part of any Lease Year, including the base year, less than ninety-five (95%) percent of the BSP is occupied or leased, then, for the purpose of computing the additional rent payable hereunder, the amount of the Common Area Maintenance Expenses for such Lease Year shall be deemed to be an amount (as reasonably determined by Owner) equal to the Common Area Maintenance Expenses which would have

been incurred during such period by Owner had such occupancy been ninety-five (95%) percent throughout such Lease Year.

42. ADDITIONAL RENT

A. All of the rent and additional rent hereunder shall he payable directly to the Owner unless the Owner notifies Tenant otherwise.

B. All sums whatsoever payable by Tenant under this Lease and not otherwise included within rent or additional rent shall constitute additional rent and shall be payable without set-off or deduction, except as so specified elsewhere in this Lease.

C. Tenant shall have fifteen (15) days from the service of any additional rent statement to notify Owner, by certified mail, return receipt requested, that it disputes the correctness of such statement. After the expiration of such fifteen (15) day period, such statement shall be binding and conclusive upon Tenant. Any such dispute shall be settled by audit and arbitration as set forth in Paragraph 41 above. If such dispute is finally determined in Tenant's favor, Owner shall credit against future payments owed by Tenant (or if no further payments are due from Tenant, shall pay to Tenant) the amount of Tenant's overpayment. If such dispute is finally determined in Owner's favor, Tenant shall pay all amounts owed to Owner within twenty (20) days after such determination.

43. HOLDOVER

A. Tenant hereby indemnifies and agrees to hold Owner harmless from and against any loss, cost, liability, claim, damage, fine, penalty and expense, including reasonable attorney's fees and disbursements, resulting from delay greater than 90 days by Tenant in surrendering the Demised Premises upon the termination or expiration of this lease as provided herein. Tenant shall in such case be responsible for the cost of necessary temporary quarters of a successor tenant but not damages from business interruption.

B. In the event Tenant remains in possession of the Demised Premises after termination or expiration of this lease without the execution of a new lease and without Owner's permission, Tenant, at the option of Owner, shall be deemed to be occupying the Demised Premises as a tenant from month to month, at a monthly rental equal to 1.25 times the base rent and additional rent payable during the last month of the term of this lease, subject to all the other terms of this lease insofar as the same are applicable to a month to month tenancy.

44. GLASS ENTRANCE AND DOORS: PLATE GLASS INSURANCE.

Tenant shall replace, at Tenant's expense, any and all plate glass or doors or windows including front and rear building entrance doors damaged or broken by Tenant or its employees, agents or invitees by any cause whatsoever in and about the Demised Premises. At Owner's written request, Tenant shall provide to Owner a paid up policy of plate glass insurance, which policy names the Owner as an additional insured to the extent of its interest and which covers the glass windows and doors on the premises.

45. UTILITIES. ETC.

A. Except as otherwise provided in this Article 45, electric current shall be supplied by Owner on a submetering basis. Tenant covenants and agrees to purchase the same from Owner or Owner's designated agent, at the charges, taxes, terms and rates paid by Owner from time to time in connection with the supply of electric current to the Building plus ten percent (10%) (?). The amount payable by Tenant shall increase in the same proportion as any increases after the date hereof in the charges, taxes, terms or rates to Owner in connection with the supply of electric current to the Building. All payments shall be due within thirty (30) days after receipt of an invoice therefor from Owner plus reasonable backup.

B. Owner may elect at any time during the Term to discontinue supplying electric current to the Demised Premises. In such event, this Lease shall continue in full force and effect and Tenant shall, at its sole cost and expense, make its own arrangements with the utility company servicing the Building for obtaining gas and electricity for the and for the payment of all charges relating thereto. Should Owner elect thus to discontinue submetering service, Owner shall not discontinue electricity until Tenant has completed arrangements for direct supply of the same. Owner shall be responsible for the cost of installation of the meter and any required additional risers required for Tenant to obtain such electric current directly from the public utility supplying same. Tenant agrees to pay for electricity and gas consumed, as shown on said meter as and when bills are rendered, directly to the utility providing such service, and on default in making such payment Owner may pay such charges and collect the same from Tenant as additional rent. In the event that at any time during the term hereof there is no meter measuring Tenant's consumption of electricity or gas, Tenant's pro-rata portion of such expenses shall be based upon square footage and actual use, as determined by Owner.

C. Owner shall not be responsible for service and/or charges for electricity in or to the Demised Premises. Owner shall not in any way be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements, except insofar as such deficiency is caused by Owner's negligence or intentional acts. Except for such negligence or intentional acts, interruption or curtailment of such service shall not constitute a constructive or partial eviction nor entitle Tenant to any compensation or abatement of rent, unless due to the act or omission of Owner, its employees, agents or contractors. Tenant shall keep the sub-meter or meter measuring Tenant's utility consumption and any related equipment in good working order and repair at Tenant's own cost and expense in default of which Owner may cause such sub-meter or meter and equipment to be replaced or repaired and collect the cost thereof from Tenant as additional rent.

47. WATER CHARGES

If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory and kitchenette purposes (as determined by Owner in Owner's reasonable discretion), Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Throughout the duration of Tenant's occupancy Tenant shall

keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense in default of which Owners may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant, as additional rent. Tenant agrees to pay for water consumed in excess of the "base" amount required for lavatory and kitchenette use , as shown on said meter and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge or any other tax, rent, levy or charge which now or thereafter is assessed, imposed or a lien upon the Demised Premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system.

48. SIENS

Tenant shall not install or maintain any sign, symbol or advertisement on the exterior of the Demised Premises, except on the main directory. All signs are subject to Owners reasonable prior written consent and shall comply with appropriate building codes and municipal requirements and shall be commercially manufactured (no paper or hand -written signs). Tenant shall be entitled to include its logo in its sign.

49. BROKER

Tenant and Owner mutually acknowledge and represent that they have dealt with no person or corporation with respect to the negotiation of this Lease. Each party agrees to indemnify and hold the other harmless from and against any claims for brokerage commissions or other compensation from any person or corporations with whom it has dealt.

50. INDEMNITY

(b) Tenant shall indemnify, defend and hold harmless Owner and its members, managers, officers, directors, employees, attorneys and agents (collectively, the "Indemnitees") from and against any and all claims, demands, causes of action, judgments, damages, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements) for any damage to any property or injury, illness or death of any person (a) occurring in, on, or about the Demised Premises, or any part thereof, arising at any time and from any cause whatsoever other than Owner's own actions; (b) occurring in, on or about any part of BSP other than the Demised Premises, when such damage, injury, illness or death shall be caused in whole or in part by any act or omission or negligence or willful or criminal misconduct of Tenant, its agents, servants, employees, or licensees; (c) arising out of or in any way related to claims for work or labor performed or materials or supplies furnished to, or at the request of, Tenant or in connection with the performance of any work done by or for the account of Tenant, whether or not Tenant obtained. Owner's permission to have such work done, labor performed or materials or supplies furnished; or (d) arising out of or in any way related to any breach of a covenant or condition in this Lease to be performed by Tenant. The provisions of this Paragraph shall survive the expiration or sooner termination of this Lease.

(c) Owner shall indemnify, defend and hold harmless Tenant and its officers, directors, employees, attorneys and agents (collectively, the "Indemnitees") from and against any and all claims, demands, causes of action, judgments, damages, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements) for any damage to any property or injury, illness or death of any person (a) occurring in, on, or about the Demised Premises, or any part thereof, arising at any time and from Owner's own actions; (b) occurring in, on or about any part of BSP other than the Demised Premises, when such damage, injury, illness or death shall be caused in whole or in part by any act or omission or negligence or willful or criminal misconduct of Owner, its -agents, servants, employees, or licensees; (c) arising out of or in any way related to claims for work or labor performed or materials or supplies furnished to, or at the request of, Owner or in connection with the performance of any work done by or for the account of Owner; or (d) arising out of or in any way related to any breach of a covenant or condition in this Lease to be performed by Owner. The provisions of this Paragraph shall survive the expiration or sooner termination of this Lease.

51. Insurance

A. Tenant shall obtain and keep in full force at all times commencing with Tenant's occupancy, and continuing throughout the term, at its own cost and expense, comprehensive general liability insurance, such insurance to afford protection initially in an amount of not less than $1,000,000 for injury or death to anyone person, $1,000,000 for injury or death arising out of anyone occurrence, and $500,000 for damage to property, protecting the Owner as additional insured to the extent of its interest, and Tenant as insured against any and all claims for personal injury, death or property damage occurring in, upon, adjacent to, or in connection with the Demised Premises and any part thereof and from time to time during the term for such higher limits, if any, as are currently carried with respect to similar properties in the area where the building is located. There shall be added to or included within such comprehensive general liability insurance all other coverage's as may be usual to Tenant's use of the Demised Premises, including without limitation, products and completed operations liability, independent contractors liability, broad form comprehensive general liability endorsements, and broad form property damage liability, as appropriate in light of Tenant's use. Tenant shall carry at all times:

1. Worker's compensation and employer's liability as required by law, if applicable.

2. New York State disability benefits liability as required by law, if applicable.

3. "All Risk" property insurance upon Tenant's Property, including contents and trade fixtures; such coverage is to be written on a replacement cost basis and in an amount of not less than 100% of the full replacement value thereof.

B. All required insurance is to be written by insurance companies licensed to do business in the State of New York which shall be reasonably satisfactory to the Owner. The original insurance policies or appropriate certificates shall be deposited with Owner together with any renewals, replacements or endorsements to the end that said insurance shall be in

full force and effect for the benefit of Owner during the term. In the event Tenant shall fail to procure and place such insurance, the Owner may on reasonable prior notice to Tenant, but shall not be obligated to, procure and place same, in which event the amount of the premium paid shall be remitted by Tenant to Owner upon demand and shall in each instance be collectible on the first day of the month or any subsequent month following the date of payment by Owner, as additional rent.

C. All required policies shall Include provisions insuring Tenant's property and business interest in the Demised Premises (business interruption insurance) against loss, damage or destruction by fire or other casualty, and a waiver of the insurer's right of subrogation against the Owner, only if obtainable without additional charge. If such waiver is not available without additional charge or at all, the Tenant shall so notify the Owner promptly after learning thereof. In such case, if the Owner shall so elect and shall pay the insurer's additional charge therefor, such waiver shall be included in the policy. Each policy which shall contain agreements by the insurer that the policy will not be materially changed, amended or canceled without at least twenty (20) days prior notice to Owner, and that the act or omission of one insured will not invalidate the policy as to the other insured.

D. There shall be maintained deductibles in such amounts as Tenant shall reasonably determine but in no event in excess of $5,000.00 with respect to a property insurance policy and in no event in excess of $5,000.00 with respect to a liability insurance policy.

E. At least 10 days prior to commencement of construction of any work in the Demised Premises, Tenant and Tenant's contractor shall deliver to Owner (and Owner's mortgagees, if required by them) certificates of insurance or policies required by evidencing all insurance coverages provided in this Article. Tenant's contractor shall be required to comply with all of such insurance obligations only through final completion of all such work.

F. Except for insurance for Tenant's trade fixtures and personal property at the premises, all property insurance policies shall cover the interest of Tenant, Owner, and/or Owner's mortgagees, as their interest may appear, and the policies therefor shall provide that adjustment of any losses thereunder shall include in the negotiation, not be settled or finalized without, and be payable to, Owner and Owner's mortgagees. All such property insurance policies shall contain a provision allowing other insurance that is provided to or for Owner.

G. All policies of insurance maintained by Tenant under this Article shall be written as primary policies not contributing with, nor in excess of, insurance coverage that Owner and its mortgagees may have. Tenant shall not carry separate or additional insurance which, in the event of any loss or damage, is concurrent in form or would contribute with the insurance required to be maintained by Tenant under this Lease.

H. If Tenant shall not insure for business interruption, or, to the extent that Tenant shall be a self insurer (including, without any limitation, any deductible under any insurance policy) Tenant agrees that Owner shall be released, and Tenant hereby releases Owner, from business interruption loss which could have been covered by an insurance

policy if Tenant had chosen to purchase one, except insofar as is otherwise provided for in this lease.

52. MAINTENANCE

A. Other than as elsewhere provided herein, Tenant is responsible for all costs associated with the maintenance of the non-structural portions of the Demised Premises and in keeping the Demised Premises in a proper manner and in a general state of cleanliness and repair.

B. Tenant shall, at its own sole cost and expense, maintain and keep in good order, condition and repair, all mechanical items, the use of which is included herein or is required for the permitted use of the Demised Premises by the health and building codes of the Village of Irvington, Town of Greenburgh or Westchester County, as well as hot water heater, pumps, vents, ducts and fixtures located within the Demised Premises, provided, however, that notwithstanding anything else set forth in this paragraph, Owner shall have sole responsibility for maintenance and repair or replacement of the HVAC system and any components thereof.

C. Owner shall be responsible for all structural repairs to the building, unless such repairs are necessitated by Tenant's wrongful acts or negligence, including the acts or negligence of its agents or employees.

53. OWNER'S COSTS TO APPROVE OR CONSENT

If Tenant requests Owner's approval or consent to alterations, additions, improvements, or assignment or any other matter or thing requiring Owner's consent or approval under this Lease, and if in connection with such request Owner seeks the advice of it s attorneys, architect and/or engineer, then Owner, as conditions precedent to granting its consent or approval, may require that the Tenant pay the reasonable fee of Owner's attorneys, architect and/or engineer in connection with the consideration of such request and/or the preparation of any documents pertaining thereto; provided however that in anyone alteration or other matter requiring Owner review, Tenant's liability for such costs shall not exceed $500 per professional (attorney, architect or engineer's).

54. USE AND OPERATION

A. The Demised Premises shall be used for general office use, uses ancillary thereto, and no other purposes.

B. Any change from substantially the use as described herein shall constitute a default under this Lease.

C. The Tenant shall not suffer or permit the Demised Premises to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) result in the Demised Premises not being operated in a manner consistent with a first-class, high quality office or which would be inconsistent

with the nature and the operation of the building, or (ii) constitute a public or private nuisance.

55. BREACH BY TENANT

A. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, Owner shall have the right to enjoin any such breach or threatened breach.

B. Any and all rights and remedies which Owner may have under this Lease and at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more or all of said rights and remedies may be exercised at the same time or at different times and from time to time. If any of the aforesaid provisions or any other provision of this lease shall be unenforceable or void, said provision shall be deemed eliminated and of no force and effect and the balance of this Lease shall continue in full force and effect. If any notice is required by law to be given, such notice shall be given.

C. The Tenant covenants and agrees to pay on demand Owner's expenses, including reasonable attorneys' fees and disbursements, incurred in successfully enforcing any obligation of the Tenant under the Lease or in curing any default by Tenant under this Lease.

D. The Owner shall have a lien on Tenant's interest in this Lease to secure the payment and performance of Tenant's obligations hereunder. Furthermore, to secure: (i) the payment of all base rent and additional rent; and (ii) Tenant's performance of all of its obligations under this Lease, Tenant grants to Owner an express first and prior lien and security interest in all fixtures and similar personal property which are and may be placed In the Demised Premises after the date hereof, and the proceeds thereof, and upon all proceeds of any insurance which may accrue to Tenant by reason of the destruction or damage of any such property. Tenant will not remove such property in which Owner has an interest as provided herein (except Tenant may remove fixtures and similar personal property if same is replaced at the premises by property of like quality and equivalent value) without the prior written consent of Owner until Owner sha1l have released its lien, or this Lease is terminated for reasons of Owner's default as determined by a court of competent jurisdiction, or the termination of such security interest as provided in this Lease, whichever first occurs. Tenant waives the benefit of all exemption laws in favor of such lien and security interest. This lien and security interest is given in addition to Owner's statutory lien and is cumulative with it. Upon the occurrence of a default, which default is not cured within the applicable cure period, these liens may be foreclosed with or without court proceedings by public or private sale, so long as Owner gives Tenant at least fifteen (15) days written notice of the time and place of the sale. Owner will have the right to become the purchaser if it is the highest bidder at such sale. By executing this Lease, Tenant is authorizing Owner to file Uniform Commercial Code Financing statements in form and substance sufficient (upon proper filing) to perfect the security interest granted in this section and any Uniform Commercial Code continuation on statements as may be required in the future to reflect any proper amendment of, modification in, or extension of the security interest granted in this section. This section shall constitute a "security agreement" as said term is defined in the New York Uniform Commercial Code. The security interest

and lien created by this subparagraph shall terminate, and Owner shall deliver to Tenant one or more UCC-3 termination statements terminating such lien, upon the earlier of: (i) The termination of this Lease by reason of Owner's default as determined by a court of competent jurisdiction or (ii) the termination or other expiration of this Lease pursuant to its terms.

E. Additionally, should the Premises not be occupied for a period of in excess of 240 consecutive days absent Owner's consent, it shall be a non-curable default hereunder. Notwithstanding foregoing, if the Premises are closed by reason of a fire or other casualty, then the provisions herein shall not apply, unless the same would result in the loss of the present use for the Premises.

56. ADDITIONAL SERVICES

Tenant covenants and agrees that, in the event any law, rule regulation or judicial determination has the effect of increasing any of the services to be furnished by Owner hereunder, Tenant agrees to pay to Owner, as additional rent, the reasonable cost incurred or to be incurred by Owner to provide such additional service to Tenant or Tenant's pro-rata share if provided to other Tenants.

57. REFUSE

A. Tenant shall at all times keep the areas used by Tenant for ingress and egress to the Demised Premises free and clear of all dirt, garbage, rubbish, refuse (which such term "refuse" as used in the Lease shall mean and include crates, boxes, merchandise, containers, bottles, paper, food and similar items), snow and ice.

B. Tenant shall accumulate all garbage, rubbish and refuse for disposal only within the interior of the Demised Premises and not in the common or services area and in areas therein kept closed by a door and in well -covered sanitary containers designed to prevent odors from emanating therefrom. No such garbage, rubbish or refuse shall be removed, or be permitted to be removed, from the interior of the Demised Premises, except in accordance with local law and Building Rules and Regulations. Tenant shall be responsible for all costs and expenses in connection with Tenant's garbage removal. Tenant shall also comply with all laws and ordinances with regard to its garbage removal and be responsible for any breach thereof.

58. EXTERMINATOR

Tenant shall, at its sole cost and expense, keep the Premises free from vermin, rodents, or anything of like, objectionable nature which emanates from the Premises or is caused by Tenant's use of the Premises, and shall employ only a licensed exterminator at the request of Owner. In the event of Tenant's failure to keep the Premises free from vermin, rodents or anything else of like nature, Owner shall have the right, at Tenant's expense, to take all necessary steps or measures to eradicate any and all vermin and rodents and other things of like nature from the Demised Premises and the cost thereof shall be added as additional rent to the installment of fixed minimum rent payable on the next monthly rental payment date and Tenant shall pay on that date such additional rent.

59. OWNER'S LIMITED LIABILITY

Anything in this lease to the contrary notwithstanding, Tenant for itself, its successors and assigns, covenants and agrees that the liability of the Owner shall be limited so that only the assets and interest of the Owner in and to One-Two Bridge Street, and the Bridge Street Property, Irvington, New York, shall be available and/or liable for the satisfaction, or security for payment of any judgment or claim against Owner or any indebtedness of Owner arising from any default by Owner. Tenant for itself, its successors and assigns, covenants and agrees that no other assets of any of the principals of Owner whether owned by them jointly or severally, directly or indirectly, shall be liable to payor satisfy any such judgment, claim, demand or indebtedness arising from any default by Owner.

60. LATE PAYMENT

If Tenant shall fail to pay any installment of base rent or any amount of additional rent for more than ten (10) days after the same shall have become due and payable, and shall have received five days written notice without having complied, Tenant shall pay Owner a late charge of five cents for each dollar of the amount of such base rent or additional rent as shall not have been paid to Owner within such ten (10) days after becoming due and payable. Such late charges shall be without prejudice to any of Owner's rights and remedies hereunder or at law or in equity for nonpayment or late payment of rent and shall be in addition thereto.

61. ALTERATION

A. Prior to the commencement of any changes, improvements or alterations to the Demised Premises, Tenant shall submit to Owner, for Owner's approval, plans and specifications (to be prepared by and at the expense of Tenant) for any proposed changes, improvements or alterations, in detail reasonably satisfactory to Owner. Owner's approval of any plans and specifications shall not indicate that such plans and specifications comply with applicable laws, rules and regulations; Tenant shall have sole responsibility for ensuring such compliance. Owner's consent shall not unreasonably be withheld conditioned or delayed. If Owner shall give its approval to any such changes, improvements and/or alterations as provided herein, the same shall be performed by Tenant, at Tenant's sole cost and expense, in accordance with the approved plans and in a good and workmanlike manner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner. Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such worker's compensation, general liability, personal and property damage insurance as Owner may reasonably require. No amendments or additions to the approved plans and specifications shall be made without the prior written consent of Owner. The standards of quality, utility and appearance of the proposed changes, improvements or alterations shall conform to the reasonable standards specified and/or to be specified by Owner, and Tenant agrees that Tenant will conform to such standards. Notwithstanding the foregoing, Tenant

shall be able to perform nonstructural alterations not costing more than one hundred dollars ($100), of suitable quality, and not affecting the structure or systems, without the necessity of prior consent of Owner.

B. Tenant covenants and agrees that all changes, improvements, and alterations will be made with the least possible disturbance to the occupants of other parts of the building. Tenant, in making such changes, improvements or alterations, shall and will, at Tenant's own cost and expense, promptly comply with all laws, rules and regulations, whether now or hereafter enacted (including, without limitation, The Americans with Disabilities Act of 1990, all regulations issued thereunder and the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as all of the foregoing may be amended from time to time) of all public authorities having jurisdiction in the building and/or the Demised Premises with reference to such changes, improvements or alterations, whether ordinary or extraordinary, structural or otherwise, foreseen or unforeseen, as applicable at the time of each such change, improvement or alteration, and will not call up on Owner for any expenses connected therewith, and will reimburse Owner for any expenses incurred on account of failure by Tenant to comply with any requirement of law, rules and regulations, and of any public authority, whether involving structural changes or not.

C. Tenant shall promptly pay and discharge all costs and expenses of such changes, improvements or alterations, and shall not do or fail to do any act which shall or may render the building or BSP liable to any mechanic's lien or other lien or charge or chattel mortgage or security interest or conditional bill of sale or title retention agreement. If any such lien or liens or other charge or chattel mortgage or security interest or conditional bill of sale or title retention agreement is filed against the building or BSP, or against such changes, improvements or alterations, or any part thereof, Tenant will, at Tenant's sole cost and expense, promptly remove the same of record within thirty (30) days after the filing of any such lien or liens or other charge or chattel mortgage or security interest or conditional bill of sale or title retention agreement and notice of such filing to Tenant by Owner or otherwise. In default thereof, Owner may cause such lien or liens or other charge or chattel mortgage or security interest or conditional bill of sale or title retention agreement to be removed of record by payment or bond or otherwise, as Owner may elect, and Tenant will reimburse Owner for all reasonable costs and expenses incidental to the removal of any such lien or liens or other charge or chattel mortgage or security interest or conditional bill of sale or title retention agreement incurred by Owner. Tenant covenants and agrees to indemnify and save harmless Owner of and from all claims, counsel fees, loss, damage and expenses whatsoever by reason of any liens, charges, chattel mortgages, security interests, conditional bills of sale, title retention agreements or payments of any kind whatsoever that may be incurred or become chargeable against Owner, the building or BSP, or said changes, improvements or alterations, or any part thereof, by reason of any work done or to be done or materials furnished or to be furnished to or upon the Demised Premises in connection with such changes, improvements or alterations, except insofar as any of the same result from work performed by or for Owner .

D. Subject to the provisions of Article 3 hereof dealing with Initial Alterations, and provided that Owner is not performing or causing the performance of the Work, Tenant hereby covenants and agrees to indemnify and save harmless Owner of and from all claims, reasonable counsel fees, loss, damage and expenses whatsoever by reason of any injury or

damage, howsoever caused, to any person or property occurring prior to the completion of such changes, improvements or alterations or occurring after such completion, as a result of anything done or omitted in connection therewith or arising out of any fine, penalty or imposition or out of any other matter or thing connected with any work done or to be done or materials furnished or to be furnished in connection with such changes, improvements or alterations performed by Tenant or at the request of Tenant. At any and all times during the period of such changes, improvements or alterations, Owner shall be entitled to have a representative or representatives on the site to inspect such changes, improvements or alterations, and such representative or representatives shall have free and unrestricted access to any and every part of the Demised Premises.

E. Tenant agrees that it will not, either directly or indirectly, use any contractors, labor and/or materials if the use of such contractors, labor and/or materials would or will create any difficulty with other contractors, subcontractors and/or labor then engaged by Tenant or Owner or others in the construction, maintenance and operation of the building or any part thereof. Tenant and its contractors and mechanics may, prior to the commencement of the term hereof, enter upon the Premises at all reasonable hours, at the sole risk of Tenant, for the purpose of making such changes, improvements or alterations, provided that Tenant and its contractors and mechanics do not interfere with Owner, its contractors, or with the occupants of other parts of the building. Such entry shall be upon all of the terms and conditions of this lease other than Owner's obligation to provide services and Tenant's obligation to pay rent. Any changes, improvements or alterations shall comply with all laws and ordinances, and all rules, orders and regulations of all governmental and quasi-governmental agencies, authorities, bureaus, departments and officials, and of all insurance bodies, at any time duly issued or in force, applicable to the building, the Demised Premises, or any part thereof.

62. TENANT'S ADDITIONAL COVENANTS

A. Tenant shall not make any exterior architecture change (whether by alteration, replacement, rebuilding .or otherwise) or change the exterior color and/or architectural treatment of the Demised Premises or of the building or any part thereof.

B. Tenant shall not use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so called "disposal" or similar units, or otherwise. The plumbing facilities shall not be used for refrigeration purposes or for any other purposes other than that for which they are constructed, no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant;

C. Tenant shall not subject any fixtures or equipment in or on the Demised Premises which are affixed to the realty, to any mortgage, liens, conditional sales agreements, security interest or encumbrances, except as is otherwise permitted hereunder; Notwithstanding the foregoing, Tenant shall have the right to lease office equipment and supplies in the ordinary course of Tenant's business, and shall have the right to grant liens and to enter security agreements and conditional sales agreements in connection therewith.

D. Tenant shall not suffer, allow or permit any odor or any noise, vibration or other effect to constitute a nuisance or otherwise interfere with the safety, comfort or convenience of Owner or other Tenants in the building.

63. SECURITY

Supplementing the provisions of Article 34, Tenant has deposited with Owner the sum of $17,002.67 as security hereunder, with a cash deposit. Tenant shall increase the security in accordance with and at the same time base rent increases are effective hereunder so that one (1) month's base rent shall be on deposit at all times. If at any time Tenant shall be in default in the payment of rent or in the keeping, observance or performance of any other covenant, agreement, term, provision or condition, Owner may at its election apply the security so on deposit with Owner, to the payment of any such rent or to the payment of the costs incurred or to be incurred by Owner in curing such default, as the case may be. If, as a result of any such application of all or any part of such security, the amount of security so on deposit with Owner shall be less than required, Tenant shall forthwith deposit with Owner an amount equal to the deficiency. If at the expiration of the term of this lease Tenants shall not be in default in the keeping, observance or performance of any such other covenant, agreement, term, provision or condition, then Owner shall, within a reasonable time after the expiration of said term, return to Tenant said security, if any, then on deposit with Owner.

64. IMPROVEMENTS

All improvements, changes and alterations made by or on behalf of Tenant in and/or to the Demised Premises (including work done by Owner at the request of Tenant, but excluding items of personally not affixed to the real property and Tenant's trade fixtures) shall, upon installation, become the property of Owner and shall be surrendered by Tenant to Owner at the expiration or sooner termination of the term of this Lease. If any security interest, chattel mortgage or other lien or encumbrance shall attach to the Tenant's Initial Improvements or any change, improvement or alteration thereto, Tenant will, at Tenant's sole cost and expense, promptly cause same to be released of record within ten (10) days after notice of the attachment thereof, failing which Owner may cause same to be released by payment, bond or otherwise, as Owner may elect, and Tenant will reimburse Owner for all reasonable costs and expenses incidental to the removal of any such lien, security interest, chattel mortgage or other lien or encumbrance, incurred by Owner. Upon failure of Tenant to so reimburse Owner at its option shall become Owner thereof. Tenant further covenants and agrees that, prior to opening for business at the Demised Premises, the entire cost of all changes, improvements and alterations made by or on behalf of Tenant at Tenant's expense (other than punch list items still to be completed, reasonable hold-backs to ensure completion, or items reasonably in dispute) will be fully paid for.

65. MISCELLANEOUS

A. If any of the provisions of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent

permitted by law. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

B. This Lease shall be governed in all respects by the laws of the State of New York.

C. Without incurring any liability to Tenant, Owner may permit access to the Demised Premises and open the same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, Marshall or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Owner hereunder shall not be deemed a recognition by Owner that the person or official making such demand has any right or in or to this Lease, or in or to the Demised Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments, in each case presenting appropriate identification. Owner shall in such cases take reasonable steps to secure the confidentiality of Tenant's business secrets.

D. Tenant agrees that its sole remedies in cases where Owner's reasonableness in exercising its judgment or withholding its consent or approval is applicable pursuant to a specific provision of this Lease, or any rider or separate agreement relating to this Lease, If any, shall be those in the nature of an injunction, declaratory judgment, or specific performance, the rights to money damages or other remedies being hereby specifically waived in cases of assignment, sublet, and construction, provided that the parties submit to arbitration as provided above on an expedited basis , unless Owner has acted in bad faith.

E. This Lease shall not be binding upon Owner or Tenant unless and until it is signed by Owner or Tenant and a fully executed copy thereof is delivered to the other party.

F. This Lease shall be construed without regard to any presumption or other role requiring construction against the party causing this Lease, or any part thereof to be drafted.

66. CONDITION OF DEMISED PREMISES

A. Supplementing the provisions of Article 15 hereof Owner makes no representations as to the size of the Demised Premises. Tenant shall give proper notice to Owner of any notice it receives of the violation of any law or requirement of any public authority with respect to the Demised Premises or the use or occupation thereof. If any governmental authority having jurisdiction over the Demised Premises shall require additional fire fighting equipment, Tenant agrees to install and maintain such equipment at its sole cost and expense.

B. Tenant covenants and agrees to conduct its business at the Demised Premises so as to prevent any noxious or offensive odors from said Demised Premises and Tenant further covenants and agrees to install, operate and maintain proper and sufficient flue, ventilating and exhaust systems and any other equipment, electrical and/or mechanical or any kind, all at Tenant's sole cost and expense, as deemed necessary or desirable to prevent

or abate such odors, and in full compliance with all laws, codes, resolution, rules, regulations of the premises and otherwise, requirements and recommendations of all governmental and quasi-governmental agencies or authorities.

67. NOTICE

Any bill, notice or other communication which either party may desire or be required to give to the other under this lease shall be deemed sufficiently given or rendered if in writing and delivered by registered or certified mail, return receipt requested, as follows:

1. From Owner to Tenant at:	2. From Tenant to Owner at:
Electro-Optical Sciences, Inc.	Bridge Street Properties, LLC
3 West Main Street	One Bridge Street
Irvington, New York 10533	Irvington, New York 10533
Attn: President	
With a copy to: William Bronner	Attn: William Thompson

After the Commencement Date, either party shall have the right to substitute addresses for such notices upon prior written notice to the other given in the manner hereinabove set forth.

68. ASSIGNMENT AND SUBLETTING

A. Each time Tenant desires to assign this Lease or sublease its interest in the Demised Premises, it shall submit in writing to Owner (i) the name and address of the proposed assignee or sublessee, (ii) a counterpart of the proposed agreement or sublease, (iii) information satisfactory to Owner as to the nature and character of the business of the proposed assignee or sublessee, and (iv) biographical, banking, financial, credit and other information relating to the proposed assignee or sublessee reasonably sufficient to enable Owner to determine the character and financial responsibility of the proposed assignee or sublessee. Any such consent of Owner shall be subject to the terms of this paragraph and conditioned upon (i) there being no default by Tenant beyond any applicable grace or notice period under any of the terms, covenants and conditions of this Lease at the time that Owner's consent is requested and on the date of the commencement of the term of any sublease or the effective date of any such proposed assignment, (ii) delivery to Owner of a written statement duly executed by Tenant acknowledging that Tenant shall continue to remain directly and primarily liable to Owner under this lease for the remaining term notwithstanding such sublease or assignment, (iii) the proposed use by such assignee or sublessee being in compliance with Articles 2 and 15 of the printed form of this lease, (iv) Tenant paying Owner the reasonable out of pocket costs and expenses, including architect's engineer's and attorneys' and brokerage fees, paid by Owner with respect to such subletting. Further, and as an additional condition to Owner's approval of any sublease, Tenant shall remit to Owner fifty (50%) percent of any and all rent and additional rent Tenant receives, as and when received, pursuant to the sublease, in excess of the rent and additional rent provided for in this lease after deducting all reasonable costs and expenses including brokerage, advertising, market concessions, fitup, legal and other professional fees.

C. Upon receiving Owner's written consent, Tenant shall deliver to Owner within ten (10) days after execution thereof a true copy of the duly executed sublease or assignment agreement. Any such sublease shall provide that the sublessee shall be subject to and shall comply with all applicable terms and conditions of this lease to be performed by Tenant hereunder.

69. NO RECORDING

Tenant expressly warrants and represents that it will not record this lease.

70. ATTORNEYS FEES & REIMBURSEMENT

Notwithstanding anything to the contrary contained in this lease, Tenant shall reimburse Owner as additional rent for the reasonable expenses of attorney's fees, and disbursements Owner incurs which arise out of or are caused by (a) Tenant's default or threatened default under the terms of this lease, whether an action, suit or proceeding is commenced based upon such default, providing that Owner has substantially prevailed in such dispute, or (b) Tenant's request of Owner to review or execute documents, including without limitation, assignment, sublease, or occupancy documents in connection with this lease.

71. ATTORNMENT

If the Demised Premises, building or land where the building is located is or will be encumbered by a mortgage, and the mortgage is foreclosed, or if the Demised Premises, building or property is sold pursuant to a foreclosure or by reason of a default under a mortgage, the following shall apply notwithstanding the foreclosure, the sale, or the default: (i) Tenant shall not disaffirm this lease or any of its obligations under this lease; (ii) at the request of the applicable mortgagee or purchaser at a foreclosure or sale, Tenant shall attorn to the mortgagee or purchaser, and at the option of such mortgagee or purchaser execute a new lease for the Demised Premises setting forth all the provisions of this lease except that the term of the new lease shall be for the balance of this lease. In confirmation of this attornment, Tenant shall promptly execute and deliver at Its own cost and expense, any instrument, in recordable form, if required, that Owner or any mortgagee may request to evidence such attornment, and Tenant hereby constitutes and appoints Owner attorney-in-fact for Tenant to executed any such instrument for and on behalf of Tenant.

72. ADDITIONAL REMEDIES

In the event that Owner shall pay any sum of money or do any act which shall require the expenditure of any sums by reason of the failure of Tenant to perform any of the covenants, terms or conditions contained in this lease, Tenant covenants to repay immediately such sums to Owner within 20 days after demand, together with interest thereon at the rate of twelve (12%) percent per annum shall be added as additional rent to the next monthly installment of base rent becoming due. Nothing contained herein shall be construed to postpone the right of Owner immediately upon expending such sums, to collect such sums, with interest at the aforesaid rate, by action or otherwise.

73. MORTGAGES

If, in connection with obtaining, continuing or renewing financing for which the Demised Premises, building or land or any interest therein represents collateral in whole or in part, a lender or other mortgagee shall request modifications of this lease as a condition of financing, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect the Tenant's leasehold interest created hereunder or decrease the size of the Demised Premises.

74. DEMISED PREMISES

If the general location, size and layout of the Demised Premises are outlined in Exhibit A, such Exhibit A shall not be deemed to be a warranty, representation or agreement on the part of Owner that the Demised Premises and the building are as indicated thereon. Nothing in this lease shall be construed as a grant or demise by Owner to Tenant of the roof or exterior walls of the building, of the space above and/or below the Demised Premises, of the parcel of land on which the Demised Premises is located, and/or any parking or other areas adjacent to the building.

75. OWNER'S CONSENT

If in this lease it is provided that Owner's consent or approval as to any matter will not be unreasonably withheld, and it is established by a court or body having final jurisdiction thereof that Owner has been unreasonable, the only effect of such finding shall be that Owner shall be deemed to have given its consent or approval, but Owner shall not be liable to Tenant or any third party in any respect for money damages by reason of withholding its consent, unless Owner's refusal to grant consent or approval was done in bad faith.

76. NO LIENS

Notwithstanding anything contained in this lease to the contrary, Tenant covenants and warrants that it shall not directly or indirectly create or permit or suffer to be created or to remain, and will promptly after notice thereof discharge or cause to be discharged, any mortgage, lien, encumbrance or charge on pledge of, security interest in or conditional sale or other title retention agreement with respect to the Demised Premises, except as expressly permitted elsewhere in this lease.

77. PARKING

A. Owner shall provide Tenant, at no cost to Tenant, for the convenience of its employees and invitees during regular business hours ten (10) nonspecified parking space(s) located in area or areas adjacent to 1 Bridge Street or 2 Bridge Street, Irvington, New York, designated by notice sent by Owner from time to time throughout the term of this lease. Owner reserves the express right to change the location of these parking spaces as in its sole discretion it deems appropriate from time to time. Tenant's privilege and use of these parking spaces are subject to the Owner's rules and regulations as set forth herein or as

otherwise established by Owner and in conformity with all local rules, regulations and ordinances of the Village of Irvington and any other government entity having jurisdiction over the premises.

B. Tenant covenants and agrees that its employees and invitees shall not at any time cause any vehicle to be parked, placed or remain within and along the perimeter of the building, including any and all fire lanes, parking spaces and areas, roadway and driveways or any other area controlled by Owner, except in areas designated by Owner for Tenant's use.

C. Use of all parking spaces and any other parking areas, roadways and driveways by Tenant, its employees or invitees will be at their own risk, and Owner shall not be liable for any injury to person or property, or for loss of damage to any automobile or its contents, resulting from theft, collision, vandalism or any other cause whatsoever. Owner shall have no obligation whatsoever to provide a security guard or any other personnel or device to patrol, illuminate, monitor, guard or secure any parking area. If, however, Owner does so provide such guard, personnel or device, it shall be solely for Owner's convenience, and Owner shall not be liable for any act or omission of such guard, personnel or device in failing to prevent any such theft, vandalism, loss injury or damage.

D. There shall be no overnight parking. Tenant shall cause its employees and invitees to remove their automobiles from all parking areas at the end of the working day. If any vehicle owned or used by Tenant, its employees or invitees remains in any parking area, all costs, expenses and liabilities incurred by Owner in removing said vehicle, or any damages resulting to such vehicle or to Tenant's property or property of others by reason of the presence or removal of such vehicle shall be paid by Tenant to Owner as additional rent as and when billed by Owner.

E. If space is available, Owner agrees to provide Tenant with an unspecified number of additional parking spaces in consideration of Tenant's payment of additional rent at the rate of $100 per space per month ("Parking rent") upon the same terms and conditions as set forth in this Paragraph. Notwithstanding the foregoing, at the end of the first year of the term of this lease, the number of parking spaces and parking rent may be increases or decreased at the discretion of the Owner. Each such installment of additional rent shall be remitted at the same time and in the same manner as installments of base annual rent.

78. FORCE MAIEURE

Time for performance by Owner and Tenant of any term, provision or covenant of this lease shall be deemed extended by time lost. due to delays resulting from acts of God, strikes, unavailability of materials, civil riots, floods, material or labor restrictions, by government authority, and any other cause not within the reasonable control of Owner. Financial inability of either party shall not constitute a cause for delay hereunder.

79. RELOCATION

Notwithstanding anything to the contrary contained herein, provided Tenant and Owner (or a company which controls, is controlled by or under common control with

Owner) have entered into a lease or other commitment whereby Tenant will occupy approximately 8700 gross rentable square feet, more or less, of space in 2 Bridge Street, within BSP (the "Other Lease"), Tenant shall have a one-time option to surrender the Premises ("Termination Option") and relocate to such other premises in accordance with the following terms and conditions:

a. If Tenant desires to exercise the Termination Option, Tenant shall give Owner irrevocable written notice ("Termination Notice") of Tenant's exercise of this Termination Option, which shall be delivered by Federal Express or similar overnight courier, by hand or by certified mail which Termination Notice must be received by Owner no later than four months before the effective date. TIME IS OF THE ESSENCE with respect to Landlord's receipt of the Termination Notice and all other deadlines in this Article.

b. If Tenant gives the Termination Notice and complies with all the provisions in this Article, the Lease as it applies to the Premises only shall terminate at 11:59 p.m. on that date which shall be the rent commencement date under a lease amendment or separate lease between the parties or their affiliates for the occupancy by Tenant of approximately 8,700 square feet of rentable space (or such other amount as the parties may subsequently agree upon) in BSP located in Two Bridge Street (the "Termination Date").

c. Tenant's obligations to pay Basic Rent, Additional Rent, and any other costs or charges under this Lease, and to perform all other Lease obligations for the period up to and including the Termination Date, shall survive the termination of this Lease. Owner's obligation to repay Tenant any overcharges shall survive the termination of this Lease.

d. [Notwithstanding the foregoing, if at any time during the period on or after the date on which Tenant shall exercise its Termination Option, up to and including the Termination Date, Tenant shall be in default of this Lease beyond any applicable notice and. cure period, then Owner may elect, but is not obligated, to cancel and declare null and void Tenant's exercise of the Termination Option and this Lease shall continue in full force and effect for the full Term hereof unaffected by Tenant's exercise of the Termination. If Owner does not cancel Tenant's exercise of the Termination option after Tenant's default, Tenant shall cure any default within the period of time specified in this Lease and this obligation shall survive the Termination Date.

e. In the event Tenant exercises the Termination Option, Tenant covenants and agrees to surrender full and complete possession of the Premises to Owner on or before the Termination Date vacant, room-clean, in good . order and condition, and in accordance with the provisions of this Lease, and, subject to any contrary provision in the lease amendment or new lease referred to above, to reimburse the Owner for the cost of tenant improvements in the Demised Premises, and thereafter the Premises shall be free and clear of all

leases, tenancies, and rights of occupancy of any entity claiming by or through Tenant.

f. If Tenant shall fail to deliver possession of the Premises on or before the Termination Date in accordance with the terms hereof, Tenant shall be deemed to be a holdover Tenant from and after the Termination Date, and in such event all covenants and terms of the holdover provisions of the original lease shall apply.

g. Tenant timely exercises the Termination Option in accordance with this Agreement the Lease as it applies to the Premises shall cease and expire on the Termination Date with the same force and effect as if said Termination Date were the date originally provided in this Lease as the Expiration Date of the Term hereof.

h. If this Lease has been assigned or all or a portion of the Premises has been sublet, this Termination Option shall be deemed null and void and neither Tenant nor any assignee or sublessee shall have the right to exercise such option during the term of such assignment or sublease.

80. RENEWAL OPTION

Provided that Tenant is then in compliance with all of the terms of this lease, Tenant shall be allowed to extend this lease for an additional period of six years commencing on the day following the last day of the term of this lease. Such extended term shall be pursuant to all the terms and provisions of this Lease, as the same may have been amended to that date, with the exception of the amount of rent and determination of base year. The rental rate shall be market rate or such other rate as the parties may agree upon.

81. ENVIRONMENTAL REPRESENTATION

Owner represents and warrants that Owner has taken no action to pollute or to create any environmental contamination within the building or on or under the land adjacent to it, and that Owner has no knowledge of the presence of any pollution or contamination, including asbestos, within the Demised Premises.

Owner

BRIDGE STREET PROPERTIES LLC

By /s/ William Thompson

William Thompson, Managing Member

Tenant

ELECTRO-OPTICAL SCIENCES, INC.

By: /s/ William R. Bronner, V.P.

Name and Title

Exhibit 23.1

The following consent is in the form that will be signed upon the effectiveness of the one-for-two reverse common stock split described in Note 1 to the financial statements.

/s/ Eisner LLP

New York, New York
June 3, 2005

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated May 31, 2005 in the Registration Statement on Form S-1 (No. _____) and related Prospectus of Electro-Optical Sciences, Inc.

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New York, New York

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Partner
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June 3, 2005

Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: EDGAR SUBMISSION
Registration Statement on Form S-1 of
Electro-Optical Sciences, Inc.

Ladies and Gentlemen:

On behalf of Electro-Optical Sciences, Inc., a Delaware corporation (the "Company"), and in connection with the proposed registration under the Securities Act of 1933, as amended, of shares of common stock of the Company, we submit in electronic form for filing the Company's Registration Statement on Form S-1 (the "Registration Statement"). Please be advised that the Company has previously transmitted the filing fee by wire transfer to you on Thursday, June 2, 2005.

If the staff wishes to discuss this filing, please call the undersigned at the number set forth above.

Very truly yours,

/s/ Valerie A. Price, Esq.

Valerie A. Price, Esq.