UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2001

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE EXCHANGE ACT**

For the transition period from _____ to _____

Commission file number 0-22613

AVI BioPharma, Inc.
(Exact name of registrant as specified in its charter)

Oregon	**93-0797222**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
One SW Columbia Street, Suite 1105, Portland, Oregon	**97258**
(Address of principal executive offices)	(Zip Code)

Issuer's telephone number, including area code: **503-227-0554**

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock with $.0001 par value	**23,114,399**
(Class)	(Outstanding at July 31, 2001)

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AVI BIOPHARMA, INC.
(A Development Stage Company)
BALANCE SHEETS

	June 30, 2001	December 31, 2000
Assets		
Current Assets:		
Cash and cash equivalents	$ 28,132,365	$ 25,898,513
Short-term securities—available-for-sale	6,596,477	6,213,586
Other current assets	1,131,114	1,019,166
Total Current Assets	35,859,956	33,131,265
Property and Equipment, net of accumulated depreciation and amortization of $2,778,776 and $2,658,549	2,423,962	1,036,749
Patent Costs, net of accumulated amortization of $606,185 and $541,185	1,058,738	890,532
Other Assets	29,847	29,847
Total Assets	$ 39,372,503	$ 35,088,393
Liabilities and Shareholders' Equity		
Current Liabilities:		
Accounts payable	$ 1,245,126	$ 1,290,804
Accrued employee compensation	369,032	431,988
Total Current Liabilities	1,614,158	1,722,792
Shareholders' Equity:		
Preferred stock, $.0001 par value, 2,000,000 shares authorized; none issued and outstanding	-	-
Common stock, $.0001 par value, 50,000,000 shares authorized; 23,073,302 and 21,508,148 issued and outstanding	2,307	2,151
Additional paid-in capital	116,075,119	105,340,697
Accumulated other comprehensive loss	(11,300,523)	(11,683,414)
Deficit accumulated during the development stage	(67,018,558)	(60,293,833)
Total Shareholders' Equity	37,758,345	33,365,601
Total Liabilities and Shareholders' Equity	$ 39,372,503	$ 35,088,393

The accompanying notes are an integral part of these balance sheets.

AVI BIOPHARMA, INC.
(A Development Stage Company)
STATEMENTS OF OPERATIONS

	Three months ended June 30,		Six months ended June 30,		July 22, 1980 (Inception) to June 30, 2001
	2001	2000	2001	2000	
Revenues, from license fees, grants and research contracts	$ 87,264	$ 18,250	$ 103,244	$ 1,150,123	$ 2,241,799
Operating expenses:					
Research and development	3,162,667	2,483,942	5,755,282	4,420,415	39,751,245

General and administrative	709,527	490,185	1,673,658	926,248	13,142,628
Acquired in-process research and development	-	-	-	-	19,545,028
	3,872,194	2,974,127	7,428,940	5,346,663	72,438,901
Other Income:	238,915	115,464	600,971	216,245	3,081,794
Interest income, net	-	-	-	-	96,750
Realized gain on sale of short-term securities	238,915	115,464	600,971	216,245	3,178,544
Net loss	$ (3,546,015)	$ (2,840,413)	$ (6,724,725)	$ (3,980,295)	$ (67,018,558)
Net loss per share - basic and diluted	$ (0.16)	$ (0.17)	$ (0.31)	$ (0.24)	
Weighted average number of common shares outstanding for computing basic and diluted loss per share	21,785,140	16,710,194	21,658,113	16,534,932	

The accompanying notes are an integral part of these statements.

AVI BIOPHARMA, INC.
(A Development Stage Company)
STATEMENTS OF CASH FLOWS

	Six months ended June 30,		For the Period July 22, 1980 (Inception) to June 30, 2001
	2001	2000	
Cash flows from operating activities:			
Net loss	$ (6,724,725)	$ (3,980,295)	$(67,018,558)
Adjustments to reconcile net loss to net cash flows used in operating activities:			
Depreciation and amortization	202,904	148,692	3,672,932
Realized gain on sale of short-term investments - available for sale	-	-	(96,750)
Compensation expense on issuance of common stock and partnership units	-	-	251,992
Compensation expense on issuance of options and warrants to purchase common stock or partnership units	-	-	562,353
Conversion of interest accrued to common stock	-	-	7,860
Acquired in-process research and development	-	-	19,545,028
(Increase) decrease in:			
Other current assets	258,052	8,100	(761,114)
Other assets	-	(352,748)	(29,847)
Net increase in accounts payable and accrued liabilities	11,366	64,442	1,734,158
Net cash used in operating activities	(6,252,403)	(4,111,809)	(42,131,946)
Cash flows from investing activities:			
Proceeds from sale or redemption of short-term investments	-	-	247,750
Purchase of property and equipment	(1,525,117)	(224,810)	(5,320,190)
Patent costs	(233,206)	(122,686)	(1,835,442)
Acquisition costs	-	-	(2,377,616)
Net cash used in investing activities	(1,758,323)	(347,496)	(9,285,498)
Cash flows from financing activities:			
Proceeds from sale of common stock, warrants, and partnership units, net of offering costs, and exercise of options and warrants	10,244,578	2,725,490	79,935,246
Buyback of common stock pursuant to rescission offering	-	-	(288,795)
Withdrawal of partnership net assets	-	-	(176,642)
Issuance of convertible debt	-	-	80,000
Net cash provided by financing activities	10,244,578	2,725,490	79,549,809

Increase (decrease) in cash and cash equivalents	2,233,852	(1,733,815)	28,132,365
Cash and cash equivalents:			
Beginning of period	25,898,513	8,683,005	-
End of period	$ 28,132,365	$ 6,949,190	$ 28,132,365
SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING ACTIVITIES AND FINANCING ACTIVITIES:			
Short-term securities--available-for-sale received in connection with the private offering	$ -	$ -	$ 17,897,000
Unrealized gain (loss) on short-term securities--available-for-sale	$ 382,891	$ 687,500	$(11,300,523)
Issuance of common stock and warrants for services	490,000	$ -	$ 490,000

AVI BioPharma, Inc.
NOTES TO FINANCIAL STATEMENTS
(Unaudited)

Note 1. Basis of Presentation

The financial information included herein for the three and six-month periods ended June 30, 2001 and 2000 and the financial information as of June 30, 2001 is unaudited; however, such information reflects all adjustments consisting only of normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods. The financial information as of December 31, 2000 is derived from AVI BioPharma, Inc.'s (the Company's) Form 10-K. The interim financial statements should be read in conjunction with the financial statements and the notes thereto included in the Company's Form 10-K. The results of operations for the interim periods presented are not necessarily indicative of the results to be expected for the full year.

Note 2. Earnings Per Share

Basic EPS is calculated using the weighted average number of common shares outstanding for the period and diluted EPS is computed using the weighted average number of common shares and dilutive common equivalent shares outstanding. Given that the Company is in a loss position, there is no difference between basic EPS and diluted EPS since the common stock equivalents would be antidilutive.

Three Months Ended June 30,	2001	2000
Net loss	$ (3,546,015)	$ (2,840,413)
Weighted average number of shares of common stock and common stock equivalents outstanding:		
Weighted average number of common shares outstanding for computing basic earnings per share	21,785,140	16,710,194
Dilutive effect of warrants and stock options after application of the treasury stock method	*	*
Weighted average number of common shares outstanding for computing diluted earnings per share	21,785,140	16,710,194
Net loss per share - basic and diluted	$ (0.16)	$ (0.17)

Six Months Ended June 30,	2001	2000
Net loss	$ (6,724,725)	$ (3,980,295)
Weighted average number of shares of common stock and common stock equivalents outstanding:		
Weighted average number of common shares outstanding for computing basic earnings per share	21,658,113	16,534,932
Dilutive effect of warrants and stock options after application of the treasury stock method	*	*
Weighted average number of common shares outstanding for computing diluted earnings per share	21,658,113	16,534,932
Net loss per share - basic and diluted	$ (0.31)	$ (0.24)

* The following common stock equivalents are excluded from earnings per share calculation as their effect would have been antidilutive:

Three Months Ended June 30,	2001	2000
Warrants and stock options	13,225,086	7,907,987

Six Months Ended June 30,	2001	2000
Warrants and stock options	13,225,086	7,907,987

Item 2. Management's Discussion and Analysis

Forward-Looking Information

The Financial Statements and Notes thereto should be read in conjunction with the following discussion. The discussion in this Form 10-Q contains certain forward-looking statements that involve risks and uncertainties, including, but not limited to, the results of research and development efforts, the results of pre-clinical and clinical testing, the effect of regulation by FDA and other agencies, the impact of competitive products, product development, commercialization and technological difficulties, and other risks detailed in the Company's Securities and Exchange Commission filings.

Overview

From its inception in July 1980, the Company has devoted its resources primarily to fund its research and development efforts. The Company has been unprofitable since inception and, other than limited interest, license fees and grants, has had no material revenues from the sale of products or other sources, and does not expect material revenues for at least the next 12 months. The Company expects to continue to incur losses for the foreseeable future as it expands its research and development efforts. As of June 30, 2001, the Company's accumulated deficit was $67,018,558.

Results of Operations

Revenues, from license fees, grants and research contracts, increased to $87,264 in the second quarter of 2001 from $18,250 in the second quarter of 2000. Revenues, from license fees, grants and research contracts, decreased to $103,244 for the six months ended June 30, 2001 from $1,150,123 for the comparable period of 2000, primarily due to the receipt of a $1,000,000 fee for expansion of a license for diagnostic applications during the first quarter of 2000.

Operating expenses increased to $3,872,194 in the second quarter of 2001 from $2,974,127 in the second quarter of 2000 and to $7,428,940 for the six months ended June 30, 2001 from $5,346,663 for the comparable period of 2000 due to increases in research and development and regulatory affairs staffing and increased expenses associated with outside collaborations and pre-clinical and clinical testing of the Company's technologies. Additionally, increased general and administrative costs were incurred to support the research expansion, and to continue to broaden the Company's investor and public relations efforts. Net interest income increased to $238,915 in the second quarter of 2001 from $115,464 in the second quarter of 2000 and to $600,971 for the six months ended June 30, 2001 from $216,245 for the comparable period in 2000 due to earnings on increased cash balances, which were offset slightly by reductions in market interest rates.

Liquidity and Capital Resources

The Company's cash and cash equivalents were $28,132,365 at June 30, 2001, compared with $25,898,513 at December 31, 2000. The increase of $2,233,852 was primarily due to net proceeds of $9,972,253 from the stock purchase agreement with Medtronic, Inc. and $272,325 from the exercise of options and warrants, offset by $6,252,403 used in operations and $1,758,323 used for investing activities which consist primarily of purchases of property and equipment and patent related costs. In addition the Company's short-term securities increased by $382,891 to $6,596,477 at June 30, 2001 due to unrealized gains in the value of these securities.

The Company entered into a license and development agreement with Medtronic, Inc. relating to the Company's antisense compounds which may have application in the treatment of vascular disease. The Company also entered into a separate stock purchase agreement with Medtronic for $10,000,000 in cash in exchange for 1,408,451 shares of AVI common stock and a warrant to purchase 3,000,000 shares of AVI common stock. Closing of the transaction occurred during the second quarter of 2001.

The Company's future expenditures and capital requirements will depend on numerous factors, including without limitation, the progress of its research and development programs, the progress of its pre-clinical and clinical trials, the time and costs involved in obtaining regulatory approvals, the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights, competing technological and market developments, the ability of the Company to establish collaborative arrangements and the terms of any such arrangements, and the costs associated with commercialization of its products. The Company's cash requirements are expected to continue to increase significantly each year as it expands its activities and operations. There can be no assurance, however, that the Company will ever be able to generate product revenues or achieve or sustain profitability.

The Company expects that its cash requirements over the next twenty-four months will be satisfied by existing cash resources.

PART II – OTHER INFORMATION

Item 2. Changes in Securities and Use of Proceeds

On June 22, 2001, the Company issued to Medtronic Asset Management, Inc. ("MAMI"), a wholly-owned subsidiary of Medtronic, Inc., 1,408,451 shares of its Common Stock, par value $0.0001 ("Common Stock"), constituting approximately 6.53% of the Company's then outstanding Common Stock, for $7.10 per share (aggregate purchase price: approximately $10 million) and a warrant to acquire 3,000,000 shares of Common Stock at an exercise price of $10.00 per share. The shares were issued pursuant to exemptions from the registration requirements of the Securities Act of 1933 pursuant to Section 4(2) and Regulation D. The net proceeds from the offering have been added to working capital and will be used to fund the Company's ongoing operations.

Item 4. Submission of Matters to a Vote of Security Holders

On May 17, 2001, at the Annual Meeting of the Company's Shareholders, the shareholders approved each of the proposals set forth in the Company's Proxy Statement dated April 16, 2001, briefly described below:

(i) The shareholders were requested to elect the following individuals to the Board of Directors:

Nominee	For	Withheld
Denis R. Burger, Ph.D.	15,090,299	116,115
Patrick L. Iversen, Ph.D.	15,127,437	78,977
Nick Bunick	15,023,685	182,729
Bruce L.A. Carter, Ph.D.	15,126,082	80,332
John W. Fara, Ph.D.	15,127,337	79,077

The foregoing directors were approved.

(ii) The shareholders were asked to approve the selection of Arthur Andersen LLP as the Company's independent auditors. The proposal was approved by the shareholders, as 15,162,727 votes were cast for the proposal, 14,295 votes were against, and 29,392 votes abstained.

Item 5. Other Information

EXELIXIS AGREEMENT

In April 2000, the Company entered into an alliance with Exelixis Inc. for functional genomics and antisense drug development. Under the terms of the agreement, Exelixis will apply its expertise in genetic model systems to discover, validate and screen novel targets suitable for inhibition by antisense therapeutics. We will design and synthesize NeuGene morpholinos for use as drugs and conduct preclinical and clinical studies on antisense drug candidates arising from the collaboration. The two companies will jointly own, and Exelixis has an option to co-develop with us, certain antisense products that arise from the alliance.

MEDTRONIC AGREEMENTS

In June 2001, we entered into a License and Development Agreement ("License Agreement") with Medtronic, Inc. ("Medtronic") wherein Medtronic received exclusive rights for certain antisense compounds, for use in conjunction with medical devices, to combat vascular disease. The Medtronic relationship was initially reported in a Form 8-K filed with the SEC on June 6, 2001 (reporting date of May 22, 2001) with additional information reported in a Form 8-K filed on July 2, 2001. Under the agreement, the Company received a $10 million equity investment from Medtronic, and could receive other milestone payments, option elections, and warrant exercises. The proposed commercial applications and sale of the technology by Medtronic are subject to further product development, certain clinical testing and trials, governmental approvals (including Federal Drug Administration approval for United States sales) and other action which could take several years. Upon the occurence of certain events specified in the License and Development Agreement, the Company is entitled to certain fixed payments; and, upon commercial exploitation of the licensed technology, the Company is entitled to certain percentage royalty payments. There is no assurance the milestones will be met or that the licensed technology will be commercially exploited and royalties received.

As previously reported, the Company issued to Medtronic Asset Management, Inc. (“MAMI”), a wholly-owned subsidiary of Medtronic, 1,408,451 shares of its Common Stock, par value $0.0001 (“Common Stock”), constituting approximately 6.53% of the Company’s then outstanding Common Stock, for $7.10 per share (aggregate purchase price: approximately $10 million) and a warrant to acquire 3,000,000 shares of Common Stock at an exercise price of $10.00 per share ("Medtronic Warrant"). The Investment Agreement between the Company and MAMI provides for additional purchases by MAMI of up to $10,000,000 of AVI Common Stock subject to the achievement of certain milestones and the receipt of certain governmental and regulatory approvals. 352,113 shares of Common Stock will be issued at a price of $7.10 per share (aggregate purchase price: approximately $2.5 million) upon the first milestone being met or waived and any required governmental or shareholder approvals, if any.

OFFICE LEASE

On May 8, 2001, the Company entered a new office lease for its approximate 2,543 square foot executive office space at One SW Columbia, Suite 1105, Portland, OR 97258. The prior lease expired July 31, 2001 and the new lease covers the period August 1, 2001 through July 31, 2004. The space is believed to be adequate for the Company’s needs for executive office space for the foreseeable future.

Item 6. Exhibits and Reports on Form 8–K

(a) Exhibits: The following exhibits are filed herewith and this list is intended to constitute the exhibit index:

10.33	Employment Agreement with Mark M. Webber dated May 11, 2000.
10.34	Employment Agreement with David H. Mason, Jr. dated November 1, 2000.
10.35	Lease Agreement with Spieker Partners, LP dated May 8, 2001.
10.36*	Investment Agreement dated May 22, 2001 between the Company and Medtronic Asset Management, Inc.
10.37	Warrant dated June 20, 2001 issued to Medtronic Asset Management, Inc.
10.38	Registration Rights Agreement dated June 20, 2001 between the Company and Medtronic Asset Management, Inc.
10.39*	License and Development Agreement dated June 20, 2001 between the Company and Medtronic, Inc.
10.40*	Supply Agreement dated June 20, 2001 between the Company and Medtronic, Inc.

* A Confidential Treatment Request for certain information in this document has been filed with the Securities and Exchange Commission. The information for which treatment has been sought has been deleted from such exhibit and the deleted text replaced by an asterisk (*).

(b) Form 8-K: The following reports on Form 8-K were filed during the calendar quarter ended June 30, 2001:

i. A Form 8-K was filed with the SEC on June 7, 2001 (reporting date of May 22, 2001) regarding the Medtronic transaction.
ii. A Form 8-K was filed with the SEC on July 2, 2001 (reporting date of June 22, 2001) also related to the Medtronic transaction.

SIGNATURES

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

Date: August 14, 2001

AVI BIOPHARMA, INC.

By: /s/ DENIS R. BURGER, Ph.D.

Denis R. Burger, Ph.D.
Chief Executive Officer
and Chairman (of the Board of Directors)
(Principal Executive Officer)

By: /s/ MARK M. WEBBER

Mark M. Webber
Chief Financial Officer
(Principal Financial and Accounting Officer)

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), made this 11th day of May, 2000, by and between **AVI BioPharma, Inc.** an Oregon corporation, with its principal office at 1 SW Columbia Street, Suite 1105, Portland, OR 97258 ("Company"), and **Mark M. Webber** ("Employee").

RECITALS:

A. Employee, through his career as a financial executive, possesses knowledge and skills that are highly desirable to the Company.

B. The Company may benefit significantly from the knowledge and skills of the Employee.

C. The Company desires to employ Employee, subject to appropriate confidentiality and non-competition clauses contained herein, to leverage its technology with Employee's knowledge and skills to the mutual benefit of the Company, the Employee, and to the benefit of the Company's shareholders.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the sufficiency of which the parties acknowledge, the parties hereby agree as follows:

1. Employment Term. The term of employment ("Term") shall commence May 11, 2000 and shall continue until terminated in accordance with Section 12.

2. Duties. Employee shall be responsible to perform such duties as assigned to him from time to time by the Board of Directors of the Company ("Board"). Employee shall be employed by the Company and shall devote his best efforts to the service of the Company throughout the Term. Employee shall devote at least forty (40) hours per week to the affairs of the Company. Employee and Company acknowledge and agree that (i) Employee may hold certain offices within certain entities as set forth on Exhibit A to this Agreement, (ii) Employee's devotion of reasonable amounts of time in such capacities, so long as it does not interfere with his performance of services hereunder, shall not conflict with the terms of this Agreement, and (iii) Exhibit A may be amended from time to time by agreement of the parties.

3. Compensation. During the Term the Company shall compensate Employee at an initial annual salary of $150,000, payable in accordance with Company's payroll practices in effect from time to time, and less amounts required to be withheld under applicable law and requested to be withheld by Employee. Employee's annual salary shall be subject to review on an annual basis. The Company may but shall not be required to pay bonus compensation to Employee. Except as otherwise provided in this Agreement, the base salary shall be prorated for any period of service less than a full month.

4. Expenses. The Company will reimburse Employee for all expenses reasonably incurred by him in discharging his duties for the Company, conditioned upon Employee's submission of written documentation in support of claimed reimbursement of such expenses, and consistent with the Company's expense reimbursement policies in effect from time to time.

5. Benefits. Subject to eligibility requirements, Employee shall be entitled to participate in such benefits plans and programs as adopted by the Company from time to time.

6. Confidentiality.

(a) In the course of his employment with the Company, it is anticipated that Employee may acquire knowledge (both orally and in writing) regarding confidential affairs of the Company and confidential or proprietary information including: (a) matters of a technical nature, such as know-how, inventions, processes, products, designs, chemicals, compounds, materials, drawings, concepts, formulas, trade secrets, secret processes or machines, inventions or research projects; (b) matters of a business nature, such as information about costs, profits, pricing policies, markets, sales, suppliers, customers, plans for future development, plans for future products, marketing plans or strategies; and (c) other information of a similar nature which is not generally disclosed by the Company to the public, referred to collectively hereafter as "Confidential Information." "Confidential Information" shall not include information generally available to the public. Employee agrees that during the term of this Agreement and thereafter, he (i) will keep secret and retain in the strictest confidence all Confidential Information, (ii) not disclose Confidential Information to anyone except employees of the Company authorized to receive it and third parties to whom such disclosure is specifically authorized, and (iii) not use any Confidential Information for any purpose other than performance of services under this Agreement without prior written permission from the Company.

(b) If Employee is served with any subpoena or other compulsory judicial or administrative process calling for production or disclosure of Confidential Information or if Employee is otherwise required by law or regulation to disclose Confidential Information, Employee will immediately, and prior to production or disclosure, notify the Company and provide it with such information as may be necessary in order that the Company may take such action as it deems necessary to protect its interest.

(c) The provisions of this paragraph 6 shall survive termination of this Agreement.

7. Noncompetition.

(a) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed toward the development of any uncharged sequence-specific nucleic acid-binding agents or any nucleic acid purification and concentration or detection system using uncharged sequence-specific nucleic acid-binding agents.

(b) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed towards the development of drug delivery systems related to the "molecular engine" as defined in US patent application Serial No. 60/016,347 and 60/028,609 or in any other patents or patent applications filed or Contemplated at any time during the Term. Patents or patent applications "Contemplated" are those included, recorded or discussed in the notebooks of researchers employed by or performing services on behalf of the Company.

(c) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed towards the development of cancer vaccines or related products, the rights to which have been or will be acquired from Ohio State University as part of the AVI/ITC merger, or in any other patents or patent applications filed, Contemplated, or acquired at any time during the Term. Patents or patent applications "Contemplated" are those included, recorded or discussed in the notebooks of researchers employed by or performing services on behalf of the Company.

(d) For a period of two (2) years following termination of employment with the Company for any reason, except with the express written consent of the Company, Employee agrees to refrain from directly or indirectly recruiting, hiring or assisting anyone else to hire, or otherwise counseling to discontinue employment with the Company, any person then employed by the Company or its subsidiaries or affiliates.

(e) The provisions of this paragraph 7 shall survive termination of this Agreement and the term of employment.

8. Covered Work.

(a) All right, title and interest to any Covered Work that Employee makes or conceives (whether alone or with others) while employed by the Company, belong to the Company. This Agreement operates as an actual assignment of all rights in Covered Work to the Company. "Covered Work" means products and Inventions that relate to the actual or anticipated business of the Company or any of its subsidiaries or affiliates, or that result from or are suggested by a task assigned to Employee or work performed by Employee on behalf of the Company or any of its subsidiaries or affiliates, or that were developed in whole or in part on the Company time or using the Company's equipment, supplies or facilities. "Inventions" mean ideas, improvements, designs, computer software, technologies, techniques, processes, products, chemicals, compounds, materials, concepts, drawings, authored works or discoveries, whether or not patentable or copyrightable, as well as other newly discovered or newly applied information or concepts. Attached hereto as Exhibit B is a description of any product or Invention in which Employee had or has any right, title or interest which is not included within the definition of "Covered Work".

(b) Employee shall promptly reveal all information relating to Covered Work and Confidential Information to an appropriate officer of the Company and shall cooperate with the Company, and execute such documents as may be necessary, in the event that the Company desires to seek copyright, patent or trademark protection thereafter relating to same.

(c) In the event that the Company requests that Employee assist in efforts to defend any legal claims to patents or other right, the Company agrees to reimburse Employee for any reasonable expenses Employee may incur in connection with such assistance. This obligation to reimburse shall survive termination of this Agreement and the term of employment.

(d) The provisions of this paragraph 8 shall survive termination of this Agreement and the term of employment.

9. Return of Inventions, Products and Documents. Employee acknowledges and agrees that all Inventions, all products of the Company and all originals and copies of records, reports, documents, lists, drawings, memoranda, notes, proposals, contracts and other documentation related to the business of the Company or containing any information described in this paragraph shall be the sole and exclusive property of the Company and shall be returned to the Company immediately upon the termination of Employee's employment with the Company or upon the written request of the Company.

10. Injunction. Employee agrees that it would be difficult to measure damages to the Company from any breach by Employee of paragraph 6, 7, 8 and/or 9 of this Agreement, and that monetary damages would be an inadequate remedy for any such breach. Accordingly, Employee agrees that if Employee shall breach paragraph 6, 7, 8 and/or 9 of this Agreement, the Company shall be entitled, in addition to all other remedies it may have at law or in equity, to an injunction or other appropriate orders to restrain any such breach without showing or proving any actual damage sustained by the Company.

11. Obligations to Others. Except for items fully disclosed in writing to the Company, Employee represents and warrants to the Company that (i) Employee's employment by the Company does not violate any agreement with any prior employer or other person or entity, and (ii) Employee is not subject to any existing confidentiality or noncompetition agreement or obligation, or any agreement relating to the assignment of Inventions except as has been fully disclosed in writing to the Company.

12. Termination.

(a) Employee may voluntarily terminate his employment with the Company upon giving the Company sixty (60) days' written notice.

(b) The Company may terminate Employee's employment without Cause (as defined below) upon giving Employee thirty (30) days written notice of termination.

(c) Employee's employment with the Company shall terminate upon the occurrence of any one of the following:

(1) Employee's death;

(2) The effective date of a notice sent to Employee stating the Board's determination made in good faith and after consultation with a qualified physician selected by the Board, that Employee is incapable of performing his duties under this Agreement, with or without reasonable accommodation, because of a physical or mental incapacity that has prevented Employee from performing such full-time duties for a period of ninety (90) consecutive calendar days and the determination that such incapacity is likely to continue for a least another ninety (90) such days; and

(3) The effective date of a notice sent to Employee terminating Employee's employment for Cause.

(d) "Cause" means the occurrence of one or more of the following events:

(1) Employee's willful and repeated failure or refusal to comply in any material respect with the reasonable and lawful policies, standards or regulations from time to time established by the Company, or to perform his duties in accordance with this Agreement after notice to Employee of such failure; and

(2) Employee engages in criminal conduct or engages in conduct with respect to the Company that is dishonest, fraudulent or materially detrimental to the reputation, character or standing of the Company.

13. Termination Compensation.

(a) Upon Employee's voluntary termination of employment (other than voluntary termination after a Change of Control (as defined below)), or termination of Employee's employment for Cause, the Company shall pay to Employee all compensation due to the date of termination, but shall have no further obligation to Employee hereunder in respect of any period following termination.

(b) Upon the death of Employee, the Company shall pay to Employee's estate or such other party who shall be legally entitled thereto, all compensation due to the date of death, and an additional amount equal to compensation at the rate set forth in this Agreement from the date of death to the final day of the month following the month in which the death occurs.

(c) Upon termination of Employee's employment by the Company other than for Cause, or upon Employee's voluntary termination of employment after a Change of Control, the Company shall pay to Employee an amount equal to twelve (12) months' compensation calculated with reference to Employee's then current annual compensation (exclusive of bonuses), which amount shall be due and payable at termination.

(d) Amounts payable under this Section shall be net of amounts required to be withheld under applicable law and amounts requested to be withheld by Employee.

(e) Upon Termination of Employee's employment by the Company other than for Cause, all outstanding options granted to Employee pursuant to the Company's 1992 Stock Incentive Plan, which vest with the passage of time (and are not performance related) shall be immediately fully vested.

(f) As used herein, "Change of Control" means the occurrence of any one of the following events: (i) any Person becomes the beneficial owner of twenty-five percent (25%) or more of the total number of voting shares of the Company; (ii) any Person (other than the Persons named as proxies solicited on behalf of the Board of Directors of the Company) holds revocable or irrevocable proxies representing twenty-five percent (25%) or more of the total number of voting shares of the Company; (iii) any Person has commenced a tender or exchange offer, or entered into an agreement or received an option, to acquire beneficial ownership of twenty-five percent (25%) or more of the total number of voting shares of the Company; and (iv) as the result of, or in connection with, any cash tender or exchange offer, merger, or other business combination, sale of assets, or any combination of the foregoing transactions, the persons who were directors of the Company before such transactions shall cease to constitute at least two-thirds (2/3) of the Board of Directors of the Company or any successor entity.

14. Notice. Unless otherwise provided herein, any notice, request, certificate or instrument required or permitted under this Agreement shall be in writing and shall be deemed "given" upon personal delivery to the party to be notified or three business days after deposit with the United States Postal Service, by registered or certified mail, addressed to the party to receive notice at the address set forth above, postage prepaid. Either party may change its address by notice to the other party given in the manner set forth in this Section.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

16. Modification. Except as otherwise specifically provided, the terms and conditions of this Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be valid or effective, it shall have been reduced to writing and signed by an authorized representative of the Company and Employee.

17. No Waiver. The failure of any party hereto exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations, shall not be a waiver by such party of its right to exercise any such or other right, power or remedy or to demand compliance.

18. Severability. In the event that any paragraph or provision of this Agreement shall be held to be illegal or unenforceable, such paragraph or provision shall be severed from this Agreement and the entire Agreement shall not fail as a result, but shall otherwise remain in full force and effect.

19. Assignment. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and shall be binding upon Employee, his administrators, executors, legatees, and heirs. In that this Agreement is a personal services contract, it shall not be assigned by Employee.

20. Dispute Resolution. Except as otherwise provided in Section 10, the Company and Employee agree that any dispute between Employee and the Company or its officers, directors, employees, or agents in their individual or Company capacity of this Agreement, shall be submitted to a mediator for nonbinding, confidential mediation. If the matter cannot be resolved with the aid of the mediator, the Company and Employee mutually agree to arbitration of the dispute. The arbitration shall be in accordance with the then-current Employment Dispute Resolution Rules of the American Arbitration Association ("AAA") before an arbitrator who is licensed to practice law in the State of Oregon. The arbitration shall take place in or near Portland, Oregon. Employee and the Company will share the cost of the arbitration equally, but each will bear their own costs and legal fees associated with the arbitration. However, if any party prevails on a statutory claim which affords the prevailing party attorneys' fees, or if there is a written agreement providing for attorneys' fees, the arbitrator may award reasonable attorneys' fees.

The Company and Employee agree that the procedures outlined in this provision are the exclusive method of dispute resolution.

21. **Attorneys' Fees.** In the event suit or action is instituted pursuant to Section 10 of this Agreement, the prevailing party in such proceeding, including any appeals thereon, shall be awarded reasonable attorneys' fees and costs.

22. **Applicable Law.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Oregon.

23. **Counterparts.** This Agreement may be signed in two counterparts, each of which shall be deemed an original and both of which shall together constitute one agreement.

IN WITNESS WHEREOF, AVI BioPharma, Inc. has caused this Agreement to be signed by its duly authorized representative, and Employee has hereunder set his name as of the date of this Agreement.

COMPANY: **AVI BioPharma, Inc.**

By: Alan P. Timmins

EMPLOYEE: **Mark M. Webber**

Exhibit A

List of Offices Held

Exhibit B

Inventions Excluded from Covered Works

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), made this 1st day of November, 2000, by and between **AVI BioPharma, Inc.** an Oregon corporation, with its principal office at 1 SW Columbia Street, Suite 1105, Portland, OR 97258 ("Company"), and **David H. Mason, Jr., M.D.** ("Employee").

RECITALS:

A. Employee, through his career as a physician and a pharmaceutical executive, possesses knowledge and skills that are highly desirable to the Company.

B. The Company possesses and will possess technology which may benefit significantly from the knowledge and skills of the Employee.

C. The Company desires to employ Employee, subject to appropriate confidentiality and non-competition clauses contained herein, to leverage its technology with Employee's knowledge and skills to the mutual benefit of the Company, the Employee, and to the benefit of the Company's shareholders.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the sufficiency of which the parties acknowledge, the parties hereby agree as follows:

1. Employment Term. The term of employment ("Term") shall commence November 1, 2000 and shall continue until terminated in accordance with Section 12.

2. Duties. Employee shall be responsible to perform such duties as assigned to him from time to time by the Board of Directors of the Company ("Board"). Employee shall be employed by the Company and shall devote his best efforts to the service of the Company throughout the Term. Employee shall devote at least forty (40) hours per week to the affairs of the Company. Employee and Company acknowledge and agree that (i) Employee may hold certain offices within certain entities as set forth on Exhibit A to this Agreement, (ii) Employee's devotion of reasonable amounts of time in such capacities, so long as it does not interfere with his performance of services hereunder, shall not conflict with the terms of this Agreement, and (iii) Exhibit A may be amended from time to time by agreement of the parties.

3. Compensation. During the Term the Company shall compensate Employee at an initial annual salary of $225,000, payable in accordance with Company's payroll practices in effect from time to time, and less amounts required to be withheld under applicable law and requested to be withheld by Employee. Employee's annual salary shall be subject to review on an annual basis. The Company may but shall not be required to pay bonus compensation to Employee. Except as otherwise provided in this Agreement, the base salary shall be prorated for any period of service less than a full month.

4. Expenses. The Company will reimburse Employee for all expenses reasonably incurred by him in discharging his duties for the Company, conditioned upon Employee's submission of written documentation in support of claimed reimbursement of such expenses, and consistent with the Company's expense reimbursement policies in effect from time to time.

5. Benefits. Subject to eligibility requirements, Employee shall be entitled to participate in such benefits plans and programs as adopted by the Company from time to time.

6. Confidentiality.

(a) In the course of his employment with the Company, it is anticipated that Employee may acquire knowledge (both orally and in writing) regarding confidential affairs of the Company and confidential or proprietary information including: (a) matters of a technical nature, such as know-how, inventions, processes, products, designs, chemicals, compounds, materials, drawings, concepts, formulas, trade secrets, secret processes or machines, inventions or research projects; (b) matters of a business nature, such as information about costs, profits, pricing policies, markets, sales, suppliers, customers, plans for future development, plans for future products, marketing plans or strategies; and (c) other information of a similar nature which is not generally disclosed by the Company to the public, referred to collectively hereafter as "Confidential Information." "Confidential Information" shall not include information generally available to the public. Employee agrees that during the term of this Agreement and thereafter, he (i) will keep secret and retain in the strictest confidence all Confidential Information, (ii) not disclose Confidential Information to anyone except employees of the Company authorized to receive it and third parties to whom such disclosure is specifically authorized, and (iii) not use any Confidential Information for any purpose other than performance of services under this Agreement without prior written permission from the Company.

(b) If Employee is served with any subpoena or other compulsory judicial or administrative process calling for production or disclosure of Confidential Information or if Employee is otherwise required by law or regulation to disclose Confidential Information, Employee will immediately, and prior to production or disclosure, notify the Company and provide it with such information as may be necessary in order that the Company may take such action as it deems necessary to protect its interest.

(c) The provisions of this paragraph 6 shall survive termination of this Agreement.

7. Noncompetition.

(a) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed toward the development of any uncharged sequence-specific nucleic acid-binding agents or any nucleic acid purification and concentration or detection system using uncharged sequence-specific nucleic acid-binding agents.

(b) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed towards the development of drug delivery systems related to the "molecular engine"

as defined in US patent application Serial No. 60/016,347 and 60/028,609 or in any other patents or patent applications filed or Contemplated at any time during the Term. Patents or patent applications "Contemplated" are those included, recorded or discussed in the notebooks of researchers employed by or performing services on behalf of the Company.

(c) Employee agrees that during the Term and for a period of two (2) years following termination of employment with the Company for any reason, he will not directly or indirectly engage in any activity directed towards the development of cancer vaccines or related products, the rights to which have been or will be acquired from Ohio State University as part of the AVI/ITC merger, or in any other patents or patent applications filed, Contemplated, or acquired at any time during the Term. Patents or patent applications "Contemplated" are those included, recorded or discussed in the notebooks of researchers employed by or performing services on behalf of the Company.

(d) For a period of two (2) years following termination of employment with the Company for any reason, except with the express written consent of the Company, Employee agrees to refrain from directly or indirectly recruiting, hiring or assisting anyone else to hire, or otherwise counseling to discontinue employment with the Company, any person then employed by the Company or its subsidiaries or affiliates.

(e) The provisions of this paragraph 7 shall survive termination of this Agreement and the term of employment.

8. Covered Work.

(a) All right, title and interest to any Covered Work that Employee makes or conceives (whether alone or with others) while employed by the Company, belong to the Company. This Agreement operates as an actual assignment of all rights in Covered Work to the Company. "Covered Work" means products and Inventions that relate to the actual or anticipated business of the Company or any of its subsidiaries or affiliates, or that result from or are suggested by a task assigned to Employee or work performed by Employee on behalf of the Company or any of its subsidiaries or affiliates, or that were developed in whole or in part on the Company time or using the Company's equipment, supplies or facilities. "Inventions" mean ideas, improvements, designs, computer software, technologies, techniques, processes, products, chemicals, compounds, materials, concepts, drawings, authored works or discoveries, whether or not patentable or copyrightable, as well as other newly discovered or newly applied information or concepts. Attached hereto as Exhibit B is a description of any product or Invention in which Employee had or has any right, title or interest which is not included within the definition of "Covered Work".

(b) Employee shall promptly reveal all information relating to Covered Work and Confidential Information to an appropriate officer of the Company and shall cooperate with the Company, and execute such documents as may be necessary, in the event that the Company desires to seek copyright, patent or trademark protection thereafter relating to same.

(c) In the event that the Company requests that Employee assist in efforts to defend any legal claims to patents or other right, the Company agrees to reimburse Employee for any reasonable expenses Employee may incur in connection with such assistance. This obligation to reimburse shall survive termination of this Agreement and the term of employment.

(d) The provisions of this paragraph 8 shall survive termination of this Agreement and the term of employment.

9. Return of Inventions, Products and Documents. Employee acknowledges and agrees that all Inventions, all products of the Company and all originals and copies of records, reports, documents, lists, drawings, memoranda, notes, proposals, contracts and other documentation related to the business of the Company or containing any information described in this paragraph shall be the sole and exclusive property of the Company and shall be returned to the Company immediately upon the termination of Employee's employment with the Company or upon the written request of the Company.

10. Injunction. Employee agrees that it would be difficult to measure damages to the Company from any breach by Employee of paragraph 6, 7, 8 and/or 9 of this Agreement, and that monetary damages would be an inadequate remedy for any such breach. Accordingly, Employee agrees that if Employee shall breach paragraph 6, 7, 8 and/or 9 of this Agreement, the Company shall be entitled, in addition to all other remedies it may have at law or in equity, to an injunction or other appropriate orders to restrain any such breach without showing or proving any actual damage sustained by the Company.

11. Obligations to Others. Except for items fully disclosed in writing to the Company, Employee represents and warrants to the Company that (i) Employee's employment by the Company does not violate any agreement with any prior employer or other person or entity, and (ii) Employee is not subject to any existing confidentiality or noncompetition agreement or obligation, or any agreement relating to the assignment of Inventions except as has been fully disclosed in writing to the Company.

12. Termination.

(a) Employee may voluntarily terminate his employment with the Company upon giving the Company sixty (60) days' written notice.

(b) The Company may terminate Employee's employment without Cause (as defined below) upon giving Employee thirty (30) days written notice of termination.

(c) Employee's employment with the Company shall terminate upon the occurrence of any one of the following:

(1) Employee's death;

(2) The effective date of a notice sent to Employee stating the Board's determination made in good faith and after consultation with a qualified physician selected by the Board, that Employee is incapable of performing his duties under this Agreement, with or without reasonable accommodation, because of a physical or mental incapacity that has prevented Employee from performing such full-time duties for a period of ninety (90) consecutive calendar days and the determination that such incapacity is likely to continue for a least another ninety (90) such days; and

(3) The effective date of a notice sent to Employee terminating Employee's employment for Cause.

(d) "Cause" means the occurrence of one or more of the following events:

(1) Employee's willful and repeated failure or refusal to comply in any material respect with the reasonable and lawful policies, standards or regulations from time to time established by the Company, or to perform his duties in accordance with this Agreement after notice to Employee of such failure; and

(2) Employee engages in criminal conduct or engages in conduct with respect to the Company that is dishonest, fraudulent or materially detrimental to the reputation, character or standing of the Company.

13. Termination Compensation.

(a) Upon Employee's voluntary termination of employment (other than voluntary termination after a Change of Control (as defined below)), or termination of Employee's employment for Cause, the Company shall pay to Employee all compensation due to the date of termination, but shall have no further obligation to Employee hereunder in respect of any period following termination.

(b) Upon the death of Employee, the Company shall pay to Employee's estate or such other party who shall be legally entitled thereto, all compensation due to the date of death, and an additional amount equal to compensation at the rate set forth in this Agreement from the date of death to the final day of the month following the month in which the death occurs.

(c) Upon termination of Employee's employment by the Company other than for Cause, or upon Employee's voluntary termination of employment after a Change of Control, the Company shall pay to Employee an amount equal to twelve (12) months' compensation calculated with reference to Employee's then current annual compensation (exclusive of bonuses), which amount shall be due and payable at termination.

(d) Amounts payable under this Section shall be net of amounts required to be withheld under applicable law and amounts requested to be withheld by Employee.

(e) Upon Termination of Employee's employment by the Company other than for Cause, all outstanding options granted to Employee pursuant to the Company's 1992 Stock Incentive Plan, which vest with the passage of time (and are not performance related) shall be immediately fully vested.

(f) As used herein, "Change of Control" means the occurrence of any one of the following events: (i) any Person becomes the beneficial owner of twenty-five percent (25%) or more of the total number of voting shares of the Company; (ii) any Person (other than the Persons named as proxies solicited on behalf of the Board of Directors of the Company) holds revocable or irrevocable proxies representing twenty-five percent (25%) or more of the total number of voting shares of the Company; (iii) any Person has commenced a tender or exchange offer, or entered into an agreement or received an option, to acquire beneficial ownership of twenty-five percent (25%) or more of the total number of voting shares of the Company; and (iv) as the result of, or in connection with, any cash tender or exchange offer, merger, or other business combination, sale of assets, or any combination of the foregoing transactions, the persons who were directors of the Company before such transactions shall cease to constitute at least two-thirds (2/3) of the Board of Directors of the Company or any successor entity.

14. Notice. Unless otherwise provided herein, any notice, request, certificate or instrument required or permitted under this Agreement shall be in writing and shall be deemed "given" upon personal delivery to the party to be notified or three business days after deposit with the United States Postal Service, by registered or certified mail, addressed to the party to receive notice at the address set forth above, postage prepaid. Either party may change its address by notice to the other party given in the manner set forth in this Section.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

16. Modification. Except as otherwise specifically provided, the terms and conditions of this Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be valid or effective, it shall have been reduced to writing and signed by an authorized representative of the Company and Employee.

17. No Waiver. The failure of any party hereto exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations, shall not be a waiver by such party of its right to exercise any such or other right, power or remedy or to demand compliance.

18. Severability. In the event that any paragraph or provision of this Agreement shall be held to be illegal or unenforceable, such paragraph or provision shall be severed from this Agreement and the entire Agreement shall not fail as a result, but shall otherwise remain in full force and effect.

19. Assignment. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns, and shall be binding upon Employee, his administrators, executors, legatees, and heirs. In that this Agreement is a personal services contract, it shall not be assigned by Employee.

20. Dispute Resolution. Except as otherwise provided in Section 10, the Company and Employee agree that any dispute between Employee and the Company or its officers, directors, employees, or agents in their individual or Company capacity of this Agreement, shall be submitted to a mediator for nonbinding, confidential mediation. If the matter cannot be resolved with the aid of the mediator, the Company and Employee mutually agree to arbitration of the dispute. The arbitration shall be in accordance with the then-current Employment Dispute Resolution Rules of the American Arbitration Association ("AAA") before an arbitrator who is licensed to practice law in the State of Oregon. The arbitration shall take place in or near Portland, Oregon. Employee and the Company will share the cost of the arbitration equally, but each will bear their own costs and legal fees associated with the arbitration. However, if any party prevails on a statutory claim which affords the prevailing party attorneys' fees, or if there is a written agreement providing for attorneys' fees, the arbitrator may award reasonable attorneys' fees.

The Company and Employee agree that the procedures outlined in this provision are the exclusive method of dispute resolution.

21. **Attorneys' Fees.** In the event suit or action is instituted pursuant to Section 10 of this Agreement, the prevailing party in such proceeding, including any appeals thereon, shall be awarded reasonable attorneys' fees and costs.

22. **Applicable Law.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Oregon.

23. **Counterparts.** This Agreement may be signed in two counterparts, each of which shall be deemed an original and both of which shall together constitute one agreement.

IN WITNESS WHEREOF, AVI BioPharma, Inc. has caused this Agreement to be signed by its duly authorized representative, and Employee has hereunder set his name as of the date of this Agreement.

COMPANY: **AVI BioPharma, Inc.**

By: Alan P. Timmins

EMPLOYEE: **DAVID H. MASON, JR., M.D.**

Exhibit A

List of Offices Held

Exhibit B

Inventions Excluded from Covered Works

OFFICE LEASE

THIS OFFICE LEASE ("**Lease**") is made between **SPIEKER PROPERTIES, L.P.,** a California limited partnership ("**Landlord**"), and **AVI BIOPHARMA, INC.,** an Oregon corporation, ("**Tenant**"), as of May 8, 2001, (the "**date of this Lease**").

BASIC LEASE INFORMATION

BUILDING: Benjamin Franklin Plaza, One SW Columbia Street, Portland, OR 97258

DESCRIPTION OF PREMISES: Suite 1105 (the Premises is as outlined in red on **Exhibit B**)

RENTABLE AREA OF PREMISES: Approximately 2,543 rentable square feet

PERMITTED USE: General Office Use

SCHEDULED TERM COMMENCEMENT DATE: August 1, 2001

SCHEDULED INITIAL TERM: Thirty-six (36)months **SCHEDULED EXPIRATION DATE:** July 31, 2004

BASE RENT:

(a) Initial Annual Base Rent: $64,846.50 ($25.50/rsf/year)

(b) Initial Monthly Installment of Base Rent: $5,404.00

(c) Subject to increase pursuant to Paragraph 3.1(b) as follows:
08/01/02 – 07/31/03 $5,563.00 per month ($26.25/rsf/year)
08/01/03 – 07/31/04 $5,722.00 per month ($27.00/rsf/year)

SECURITY DEPOSIT: Tenant shall maintain existing security deposit on account in the amount of $3,659.00

BASE YEAR FOR OPERATING EXPENSES: Calendar Year 2001

TENANT'S PROPORTIONATE SHARE OF BUILDING: 0.96%

TENANT'S NAICS CODE: 325412

TENANT CONTACT: Name: Alan Timmins
Telephone Number: 503.227.0554
FAX: 503.227.0751

ADDRESSES FOR NOTICES:

To: Tenant

One SW Columbia Street, Suite 1105
Portland, OR 97258
Attn: Alan Timmins
FAX: 503.227.0751

To: Landlord

One SW Columbia Street, Suite 445
Portland, OR 97258
Attn: Vice President
FAX: 503.973.5453

TENANT'S BILLING ADDRESS: Not Applicable

LANDLORD'S REMITTANCE ADDRESS: Spieker Properties, P.O. Box 3900, Department 30301, Portland, OR 97208

GUARANTOR: Not Applicable

IN WITNESS WHEREOF, the parties hereto have executed this Lease, consisting of the foregoing Basic Lease Information, the following Standard Lease Provisions consisting of **Paragraphs 1 through 22** (the "**Standard Lease Provisions**") and **Exhibits A, B, C and D**, all of which are incorporated herein by this reference (collectively, this **"Lease"**). In the event of any conflict between the provisions of the Basic Lease Information and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control.

"**Landlord**"

SPIEKER PROPERTIES, L.P.,
a California limited partnership,

By: Spieker Properties, Inc.,
a Maryland corporation, its general partner

By: _____

Lynda M. Clarke

Its: Vice President

Date: _____

"**Tenant**"

AVI BIOPHARMA, INC.,
an Oregon corporation

By: _____

Alan Timmins

Its: President, Chief Operating Officer

Date: _____

STANDARD LEASE PROVISIONS

1. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the **"Premises"**) described in the Basic Lease Information and as outlined in red or as shown in the cross-hatched markings on the floor plan attached hereto as **Exhibit B**. The parties agree that for all purposes hereunder the Premises shall be stipulated to contain the number of square feet of rentable area described in the Basic Lease Information. The Premises are located in that certain office building (the **"Building"**) whose street address is as shown in the Basic Lease Information. The Building is located on that certain land which is also improved with landscaping, parking facilities and other improvements and appurtenances. Such land, together with all such improvements and appurtenances and the Building, are all or part of a project which may consist of more than one building and additional facilities, as described in the Basic Lease Information (collectively referred to herein as the **"Project"**). However, Landlord reserves the right to make such changes, additions and/or deletions to such land, the Building and the Project and/or the common areas and parking or other facilities thereof as it shall determine from time to time.

2. Term.

(a) Unless earlier terminated in accordance with the provisions hereof, the term of this Lease (the "**Term**") shall be as set forth in the Basic Lease Information; provided, however, in the event the Term Commencement Date (defined below) occurs on a date other than the first day of a calendar month, there shall be added to the Term the partial month (**"Partial Lease Month"**) from the Term Commencement Date to (but not including) the first day of the calendar month following the Term Commencement Date.

(b) Subject to the provisions of this Paragraph 2, the Term shall commence on the date (the **"Term Commencement Date"**) which is the earlier of the date Landlord delivers the Premises to Tenant or the date Tenant takes possession or commences use of any portion of the Premises for any business purpose (including moving in). If this Lease contemplates the construction of tenant improvements in the Premises by Landlord, Landlord shall be deemed to have delivered the Premises to Tenant on the date determined by Landlord's space planner to be the date of substantial completion of the work to be performed by Landlord (as described in the Improvement Agreement, if any, attached hereto as **Exhibit C**) (the **"Improvement Agreement"**). Notwithstanding the foregoing, in the event that Landlord is delayed in delivering the Premises by reason of any act or omission of Tenant, the Term Commencement Date shall be (unless Tenant takes possession or commences use of the Premises prior thereto) the date the Premises would have been delivered by Landlord had such Tenant caused delay(s) not occurred. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Term. Tenant acknowledges that Tenant has inspected and accepts the Premises in their present condition, "as is", except for tenant improvements (if any) to be constructed by Landlord in the Premises pursuant to the Improvement Agreement, if any.

(c) In the event the Term Commencement Date is delayed or otherwise does not occur on the Scheduled Term Commencement Date specified in the Basic Lease Information, this Lease shall not be void or voidable, the Term shall not be extended (except as provided in Paragraph 2(a)), and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom; provided that Tenant shall not be liable for any Rent (defined below) for any period prior to the Term Commencement Date except as may otherwise be provided in this Lease. Landlord may deliver to Tenant Landlord's standard form **"Start-Up Letter"** for Tenant's acknowledgment and confirmation of the Term Commencement Date. Tenant shall execute and deliver such Start-Up Letter to Landlord within five (5) days after receipt thereof, but Tenant's failure or refusal to do so shall not negate Tenant's acceptance of the Premises or affect determination of the Term Commencement Date.

3. Rent and Operating Expenses.

3.1 Base Rent

(a) Subject to the provisions of this Paragraph 3.1, Tenant agrees to pay during the Term as Base Rent for the Premises the sums specified in the Basic Lease Information (as increased from time to time as provided in the Basic Lease Information or as may otherwise be provided in this Lease) (**"Base Rent"**).

(b) Base Rent shall increase as set forth in the Basic Lease Information or as may otherwise be provided in this Lease.

(c) Except as expressly provided to the contrary herein, Base Rent shall be payable in equal consecutive monthly installments, in advance, without deduction or offset, commencing on the Term Commencement Date and continuing on the first day of each calendar month thereafter. However, the first full monthly installment of Base Rent shall be payable upon Tenant's execution of this Lease. If the Term Commencement Date is a day other than the first day of a calendar month, then the Rent for the Partial Lease Month (the **"Partial Lease Month Rent"**) shall be prorated based on a month of 30 days. The Partial Lease Month Rent shall be payable by Tenant on the first day of the calendar month next succeeding the Term Commencement Date. Base Rent, all forms of additional rent payable hereunder by Tenant and all other amounts, fees, payments or charges payable hereunder by Tenant (collectively, **"Additional Rent"**) shall (i) each constitute rent payable hereunder (and shall sometimes collectively be referred to herein as **"Rent"**), (ii) be payable to Landlord in lawful money of the United States when due without any prior demand therefor, except as may be expressly provided to the contrary herein, and (iii) be payable to Landlord at Landlord's Remittance Address set forth in the Basic Lease Information or to such other person or to such other place as Landlord may from time to time designate in writing to Tenant. Any Rent or other amounts payable to Landlord by Tenant hereunder for any fractional month shall be prorated based on a month of 30 days.

3.2 Operating Expenses.

(a) Subject to the provisions of this Lease, Tenant shall pay to Landlord pursuant to this Paragraph 3.2 as Additional Rent an amount equal to Tenant's Proportionate Share (defined below) of the excess, if any, of Operating Expenses (defined below) allocable to each Expense Year (defined below) over Operating Expenses allocable to the Base Year (the **"Base Year"**) specified in the Basic Lease Information **("Base Year Operating Expenses"**). Base Year Operating Expenses shall not include market-wide labor-rate increases due to extraordinary circumstances, including, but not limited to, boycotts and strikes, and utility rate increases due to extraordinary circumstances including, but not limited to, conservation surcharges, boycotts, embargoes or other shortages, or amortized costs relating to capital improvements. **"Tenant's Proportionate Share"** is, subject to the provisions of this Paragraph 3.2, the percentage number (representing the Premises' share of the Building and the Project) set forth in the Basic Lease Information. An **"Expense Year"** is any calendar year after the Base Year any portion of which falls within the Term.

(b) **"Operating Expenses"** means all costs, expenses and obligations incurred or payable by Landlord because of or in connection with the operation, ownership, repair, replacement, restoration, management or maintenance of the Project during or allocable to the Base Year or an Expense Year (as applicable) during the Term (other than costs, expenses or obligations specifically attributable to Tenant or other tenants of the Building or Project), all as determined by sound accounting principles reasonably selected by Landlord and consistently applied, including without limitation the following:

(i) All property taxes, assessments, charges or impositions and other similar governmental ad valorem or other charges levied on or attributable to the Project (including personal and real property contained therein) or its ownership, operation or transfer, and all taxes, charges, assessments or similar impositions imposed in lieu or substitution (partially or totally) of the same (collectively, **"Taxes"**). **"Taxes"** shall also include (A) all taxes, assessments, levies, charges or impositions on any interest of Landlord in the Project, the Premises or in this Lease, or on the occupancy or use of space in the Project or the Premises; or on the gross or net rentals or income from the Project, including, without limitation, any gross income tax, excise tax, sales tax or gross receipts tax levied by any federal, state or local governmental entity with respect to the receipt of Rent; or (B) any possessory taxes charged or levied in lieu of real estate taxes; and

(ii) The cost of all utilities, supplies, equipment, tools, materials, service contracts, janitorial services, waste and refuse disposal, landscaping, and insurance (with the nature and extent of such insurance to be carried by Landlord to be determined by Landlord in its sole and absolute discretion); insurance deductibles; compensation and benefits of all persons who perform services connected with the operation, management, maintenance or repair of the Project; personal property taxes on and maintenance and repair of equipment and other personal property; costs and fees for administration and management of the Project, whether by Landlord or by an independent contractor, and other management office operational expenses; rental expenses for or a reasonable allowance for depreciation of, personal property used in the operation, management, maintenance or repair of the Project, license, permit and inspection fees; and all inspections, activities, alterations, improvements or other matters required by any governmental or quasi-governmental authority or by Regulations (defined below), for any reason, including, without limitation, capital improvements, whether capitalized or not; all capital additions, repairs, replacements and improvements made to the Project or any portion thereof by Landlord (A) of a personal property nature and related to the operation, repair, maintenance or replacement of systems, facilities, equipment or components of (or which service) the Project or portions thereof, (B) required or provided in connection with any existing or future applicable municipal, state, federal or other governmental statutes, rules, requirements, regulations, laws, standards, orders or ordinances including, without limitation, zoning ordinances and regulations, and covenants, easements and restrictions of record (collectively, **"Regulations"**), (C) which are designed to improve the operating efficiency of the Project, or (D) determined by Landlord to be required to keep pace or be consistent with safety or health advances or improvements (with such capital costs to be amortized over such periods as Landlord shall determine with a return on capital at such rate as would have been paid by Landlord on funds borrowed for the purpose of constructing such capital items); common area repair, resurfacing, replacement, operation and maintenance; security systems or services, if any, deemed appropriate by Landlord (but without obligation to provide the same); and any other cost or expense incurred or payable by Landlord in connection with the operation, ownership, repair, replacement, restoration, management or maintenance of the Project.

(iii) Notwithstanding anything in this Lease to the contrary, in no event shall the component of Operating Expenses for any Expense Year consisting of electrical costs be less than the component of Base Year Operating Expenses consisting of electrical costs.

(c) Variable items of Operating Expenses (e.g., expenses that are affected by variations in occupancy levels) for the Base Year and each Expense Year during which actual occupancy of the Project is less than ninety-five percent (95%) of the rentable area of the Project shall be appropriately adjusted, in accordance with sound accounting principles reasonably selected by Landlord, to reflect ninety-five percent (95%) occupancy of the existing rentable area of the Project during such period.

(d) Prior to or shortly following the commencement of (and from time to time during) each Expense Year of the Term following the Term Commencement Date, Landlord shall have the right to give to Tenant a written estimate of Tenant's Proportionate Share of the projected excess, if any, of the Operating Expenses for the Project for such year over the Base Year Operating Expenses. Commencing with the first day of the calendar month following the month in which such estimate was delivered to Tenant, Tenant shall pay such estimated amount (less amounts, if any, previously paid toward such excess for such year) to Landlord in equal monthly installments over the remainder of such calendar year, in advance on the first day of each month during such year (or remaining months, if less than all of the year remains). Subject to the provisions of this Lease, Landlord shall endeavor to furnish to Tenant within a reasonable period after the end of each Expense Year, a statement (a **"Reconciliation Statement"**) indicating in reasonable detail the excess, if any, of Operating Expenses allocable to such Expense Year over Base Year Operating Expenses and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's actual share of such excess as indicated by such annual Reconciliation Statement.

(e) Tenant shall pay ten (10) days before delinquency all taxes and assessments levied against any personal property or trade fixtures of Tenant in or about the Premises. If any such taxes or assessments are levied against Landlord or Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures, Tenant shall, within ten (10) days of demand, reimburse Landlord for the taxes and assessments so levied against Landlord, or any such taxes, levies and assessments resulting from such increase in assessed value.

(f) Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3.2, or (ii) computing or billing Tenant's Proportionate Share of excess Operating Expenses shall not (A) constitute a waiver of its right to subsequently deliver such estimate or statement or require any increase in Rent contemplated by this Paragraph 3.2, or (B) in any way waive or impair the continuing obligations of Tenant under this Paragraph 3.2. Provided that Tenant is not then in default under this Lease, subject to compliance with Landlord's standard procedures for the same, Tenant shall have the right, upon the condition that Tenant shall first pay to Landlord the amount in dispute, to have independent certified public accountants of national standing (who are not compensated on a contingency basis) of Tenant's selection (and subject to Landlord's reasonable approval) review Landlord's Operating Expense books and records relating to the Expense Year subject to a particular Reconciliation Statement during the sixty-day period following delivery to Tenant of the Reconciliation Statement for such Expense Year. If such review discloses a liability for a refund in excess of ten percent (10%) of Tenant's Proportionate Share of Operating Expenses previously reported, the cost of such review shall be borne by Landlord; otherwise such cost shall be borne by Tenant. Tenant waives the right to dispute or contest, and shall have no right to dispute or contest, any matter relating to the calculation of Operating Expenses or other forms of Rent under this Paragraph 3.2 with respect to each Expense Year for which a Reconciliation Statement is given to Tenant if no claim or dispute with respect thereto is asserted by Tenant in writing to Landlord within sixty (60) days of delivery to Tenant of the original or most recent Reconciliation Statement with respect thereto.

4. Delinquent Payment; Handling Charges. In the event Tenant is more than three (3) days late in paying any amount of Rent or any other payment due under this Lease, Tenant shall pay Landlord, within ten (10) days of Landlord's written demand therefor, a late charge equal to five percent (5%) of the delinquent amount, or $150.00, whichever amount is greater. In addition, any amount due from Tenant to Landlord hereunder which is not paid within ten (10) days of the date due shall bear interest at an annual rate (the **"Default Rate"**) equal to twelve percent (12%).

5. Security Deposit. Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord the amount of Security Deposit (the **"Security Deposit"**) specified in the Basic Lease Information, which shall be held by Landlord to secure Tenant's performance of its obligations under this Lease. Landlord is hereby granted a security interest in the Security Deposit in accordance with applicable law. The Security Deposit is not an advance payment of Rent or a measure or limit of Landlord's damages upon a default by Tenant or an Event of Default (defined below). If Tenant defaults with respect to any provision of this Lease, Landlord may, but shall not be required to, use, apply or retain all or any part of the Security Deposit (a) for the payment of any Rent or any other sum in default, (b) for the payment of any other amount which Landlord may spend or become obligated to spend by reason of such default by Tenant, and (c) to compensate Landlord for any other loss or damage which Landlord may suffer by reason of such default by Tenant. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefor by Landlord, deposit with Landlord cash in an amount sufficient to restore the Security

Deposit to the amount required to be maintained by Tenant hereunder. Within a reasonable period following expiration or the sooner termination of this Lease, provided that Tenant has performed all of its obligations hereunder, Landlord shall return to Tenant the remaining portion of the Security Deposit. The Security Deposit may be commingled by Landlord with Landlord's other funds, and no interest shall be paid thereon. If Landlord transfers its interest in the Premises, then Landlord may assign the Security Deposit to the transferee and thereafter Landlord shall have no further liability or obligation for the return of the Security Deposit. Tenant hereby waives the provisions of all provisions of any Regulations, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

6. Landlord's Obligations.

6.1 Services. Subject to the provisions of this Lease, Landlord shall use good faith efforts to furnish to Tenant during the Term (a) city or utility company water at those points of supply provided for general use of the tenants of the Building; (b) subject to mandatory and voluntary Regulations, heating and air conditioning during ordinary business hours of generally recognized business days designated by Landlord (which in any event shall not include Saturdays, Sundays or legal holidays) **("Business Hours**) for the Building at such temperatures and in such amounts as Landlord reasonably determines is appropriate for normal comfort for normal office use in the Premises; (c) janitorial services to the Premises on weekdays, other than on legal holidays, for Building-standard installations; (d) nonexclusive passenger elevator service; and (e) adequate electrical current during such Business Hours for equipment that does not require more than 110 volts and whose electrical energy consumption does not exceed normal office usage in a premises of the size of the Premises, as determined by Landlord. If Tenant desires any of the services specified in this Paragraph 6.1 at any time other than during Business Hours, then subject to such nondiscriminatory conditions and standards as Landlord shall apply to the same, upon the written request of Tenant, such services shall be supplied to Tenant in accordance with Landlord's customary procedures for the Building, including such advance request deadlines as Landlord shall require from time to time, and Tenant shall pay to Landlord Landlord's then customary charge for such services within ten (10) days after Landlord has delivered to Tenant an invoice therefor. Landlord reserves the right to change the supplier or provider of any such service from time to time. Tenant shall not have the right to obtain any such service for the Premises directly from a supplier or provider of such service except as provided in Paragraph 6.4 below.

6.2 Excess Utility Use. Landlord shall not be required to furnish electrical current for, and Tenant shall not install or use, without Landlord's prior written consent, any equipment (a) that requires more than 110 volts, (b) whose operation is in excess of, or inconsistent with, the capacity of the Building (or existing feeders and risers to, or wiring in, the Premises) or (c) whose electrical energy consumption exceeds normal office usage of up to three (3) watts of connected load per usable square foot (**"Standard Usage"**). Subject to the provisions of this Paragraph 6.2, if Tenant's consumption of electricity exceeds the electricity to be provided by Landlord above or Standard Usage (which shall be determined by separate metering to be installed at Tenant's expense or by such other method as Landlord shall reasonably select), Tenant shall pay to Landlord Landlord's then customary charge for such excess consumption within ten (10) days after Landlord has delivered to Tenant an invoice therefor.

6.3 Restoration of Services. Following receipt of Tenant's request to do so, Landlord shall use good faith efforts to restore any service specifically to be provided under Paragraph 6.1 that becomes unavailable and which is in Landlord's reasonable control to restore; provided, however, that in no case shall the unavailability of such services or any other service (or any diminution in the quality or quantity thereof) or any interference in Tenant's business operations within the Premises render Landlord liable to Tenant or any person using or occupying the Premises under or through Tenant (including, without limitation, any contractor, employee, agent, invitee or visitor of Tenant) (each, a **"Tenant Party"**) for any damages of any nature whatsoever caused thereby, constitute a constructive eviction of Tenant, constitute a breach of any implied warranty by Landlord, or entitle Tenant to any abatement of Tenant's rental obligations hereunder.

6.4 Telecommunications Services. Tenant may contract separately with providers of telecommunications or cellular products, systems or services for the Premises. Even though such products, systems or services may be installed or provided by such providers in the Building, in consideration for Landlord's permitting such providers to provide such services to Tenant, Tenant agrees that Landlord and the Landlord Indemnitees (defined below) shall in no event be liable to Tenant or any Tenant Party for any damages of any nature whatsoever arising out of or relating to the products, systems or services provided by such providers (or any failure, interruption, defect in or loss of the same) or any acts or omissions of such providers in connection with the same or any interference in Tenant's business caused thereby. Tenant waives and releases all rights and remedies against Landlord and the Landlord Indemnitees that are inconsistent with the foregoing.

7. Improvements, Alterations, Repairs and Maintenance.

7.1 Improvements; Alterations. Any alterations, additions, deletions, modifications or utility installations in, of or to the improvements contained within the Premises (collectively, **"Alterations"**) shall be installed at Tenant's expense and only in accordance with detailed plans and specifications, construction methods, and all appropriate permits and licenses, all of which have been previously submitted to and approved in writing by Landlord, and by a professionally qualified and licensed contractor and subcontractors approved by Landlord. No Alterations in or to the Premises may be made without (a) Landlord's prior written consent and (b) compliance with such reasonable requirements and construction regulations concerning such Alterations as Landlord may impose from time to time. Landlord will not be deemed to unreasonably withhold its consent to any Alteration that violates Regulations, may affect or be incompatible with the Building's structure or its HVAC, plumbing, telecommunications, elevator, life-safety, electrical, mechanical or other basic systems, or the appearance of the interior common areas or exterior of the Project, or which may interfere with the use or occupancy of any other portion of the Project. All Alterations made in or upon the Premises shall, (i) at Landlord's option, either be removed by Tenant prior to the end of the Term (and Tenant shall restore the portion of the Premises affected to its condition existing immediately prior to such Alteration), or shall remain on the Premises at the end of the Term, (ii) be constructed, maintained, insured and used by Tenant, at its risk and expense, in a first-class, good and workmanlike manner, and in accordance with all Regulations, and (iii) shall be subject to payment of Landlord's standard alterations supervision fee. If any Alteration made or initiated by Tenant or the removal thereof shall cause, trigger or result in any portion of the Project outside of the Premises, any portion of the Building's shell and core improvements (including restrooms, if any) within the Premises, or any Building system inside or outside of the Premises being required by any governmental authority to be altered, improved or removed, or may otherwise potentially affect such portions of the Project or any other tenants of the Project, Landlord shall have the option (but not the obligation) of performing the same at Tenant's expense, in which case Tenant shall pay to Landlord (within ten (10) days of Landlord's written demand) in advance Landlord's reasonable estimate of the cost of such work, and any actual costs of such work in excess of Landlord's estimate, plus an administrative charge of fifteen percent (15%) thereof. At least ten (10) days before beginning construction of any Alteration, Tenant shall give Landlord written notice of the expected commencement date of that construction to permit Landlord to post and record a notice of non-responsibility. Upon substantial completion of construction, if the law so provides, Tenant shall cause a timely notice of completion to be recorded in the office of the recorder of the county in which the Building is located.

7.2 Repairs and Maintenance. Tenant shall maintain at all times during the Term the Premises and all portions and components of the improvements and systems contained therein in a first-class, good, clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises. Tenant shall repair or replace, as needed, subject to Landlord's direction and supervision, any damage to the Building or the Project caused by Tenant or any Tenant Party. If any such damage occurs outside of the Premises or relates to any Building system, or if Tenant fails to perform Tenant's obligations under this Paragraph 7.2 or under any other paragraph of this Lease within ten (10) days' after written notice from Landlord (except

in the case of an emergency, in which case no notice shall be required), then Landlord may elect to perform such obligations and repair such damage itself at Tenant's expense. The cost of all repair or replacement work performed by Landlord under this Paragraph 7.2, plus an administrative charge of fifteen percent (15%) of such cost, shall be paid by Tenant to Landlord within ten (10) days of receipt of Landlord's invoice therefor as Additional Rent. Tenant hereby waives all common law and statutory rights or provisions inconsistent herewith, whether now or hereinafter in effect. Landlord shall use reasonable efforts to maintain the common areas of the Project at all times during the Term with the cost thereof constituting an Operating Expense under Paragraph 3.2.

7.3 **Mechanic's Liens**. Tenant shall not cause, suffer or permit any mechanic's or materialman's lien, claim, or stop notice to be filed or asserted against the Premises, the Building or any funds of Landlord for any work performed, materials furnished, or obligation incurred by or at the request of Tenant or any Tenant Party. If any such lien, claim or notice is filed or asserted, then Tenant shall, within ten (10) days after Landlord has delivered notice of the same to Tenant, either (a) pay and satisfy in full the amount of (and eliminate of record) the lien, claim or notice or (b) diligently contest the same and deliver to Landlord a bond or other security therefor in substance and amount (and issued by an issuer) satisfactory to Landlord.

8. **Use**. Tenant shall continuously occupy and use the Premises only for general office use or uses incidental thereto, all of which shall be consistent with the standards of a first class office project (the **"Permitted Use"**) and shall comply, at Tenant's expense, with all Regulations relating to the use, condition, alteration, improvement, access to, and occupancy of the Premises, including without limitation, Regulations relating to Hazardous Materials (defined below). Should any Regulation now or hereafter be imposed on Tenant or Landlord by any governmental body relating to the use or occupancy of the Premises or the Project common areas by Tenant or any Tenant Party or concerning occupational, health or safety standards for employers, employees, or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such Regulations if such Regulations relate to anything within the Premises or if compliance with such Regulations is within the control of Tenant and applies to an area outside of the Premises. Tenant shall conduct its business and shall cause each Tenant Party to act in such a manner as to (a) not release or permit the release of any Hazardous Material in, under, on or about the Project in violation of any Regulations, (b) use or store any Hazardous Materials (other than incidental amounts of cleaning and office supplies) in or about the Premises or (c) not create or permit any nuisance or unreasonable interference with or disturbance of other tenants of the Project or Landlord in its management of the Project or (d) not create any occupancy density in the Premises or parking density with respect to Tenant and any Tenant Party at the Project greater than those specified in the Basic Lease Information. **"Hazardous Material"** means any hazardous, explosive, radioactive or toxic substance, material or waste which is or becomes regulated by any local, state or federal governmental authority or agency, including, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material," "pollutant" or "contaminant" under any Regulation, (ii) a flammable explosive, (iii) a radioactive material, (iv) a polychlorinated biphenyl, (v) asbestos or asbestos containing material, or (vi) a carcinogen.

9. **Assignment and Subletting.**

9.1 **Transfers; Consent**. Tenant shall not, without the prior written consent of Landlord, (a) assign, transfer, mortgage, hypothecate, or encumber this Lease or any estate or interest herein, whether directly, indirectly or by operation of law, (b) permit any other entity to become a Tenant hereunder by merger, consolidation, or other reorganization, (c) if Tenant is a corporation, partnership, limited liability company, limited liability partnership, trust, association or other business entity (other than a corporation whose stock is publicly traded), permit, directly or indirectly, the transfer of any ownership interest in Tenant so as to result in (i) a change in the current control of Tenant, (ii) a transfer of twenty-five percent (25%) or more in the aggregate in any twelve (12) month period in the beneficial ownership of such entity or (iii) a transfer of all or substantially all of the assets of Tenant, (d) sublet any portion of the Premises, or (e) grant any license, concession, or other right of occupancy of or with respect to any portion of the Premises, or (f) permit the use of the Premises by any party other than Tenant or a Tenant Party (each of the events listed in this Paragraph 9.1 being referred to herein as a **"Transfer"**). If Tenant requests Landlord's consent to any Transfer, then at least twenty (20) business days prior to the effective date of the proposed Transfer, Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer and all consideration therefor (including a calculation of the Transfer Profits described below), copies of the proposed documentation, and the following information relating to the proposed transferee: name and address; information reasonably satisfactory to Landlord concerning the proposed transferee's business and business history; its proposed use of the Premises; banking, financial, and other credit information; and general references sufficient to enable Landlord to determine the proposed transferee's creditworthiness and character. Landlord shall not unreasonably withhold its consent to any assignment or subletting of the Premises, provided that the parties agree that it shall be reasonable for Landlord to withhold any such consent if, without limitation, Landlord determines in good faith that (A) the proposed transferee is not of a reasonable financial standing or is not creditworthy, (B) the proposed transferee is a governmental agency, (C) the proposed transferee, or any affiliate thereof, is then an occupant in the Project or has engaged in discussions with Landlord concerning a direct lease of space in the Project, (D) the proposed Transfer would result in a breach of any obligation of Landlord or permit any other tenant in the Project to terminate or modify its lease, (E) there is then in effect an uncured Event of Default, (F) the Transfer would increase the occupancy density or parking density of the Project or any portion thereof, (G) the Transfer would result in an undesirable tenant mix for the Project, as determined in good faith by Landlord, (H) the proposed transferee does not enjoy a good reputation, as a business or as a tenant; or (I) any guarantor of the Lease does not consent to such Transfer in a form satisfactory to Landlord. Any Transfer made without Landlord's consent shall be void and, at Landlord's election, shall constitute an Event of Default by Tenant. Tenant shall also, within ten (10) days of written demand therefor, pay to Landlord $500 as a review fee for each Transfer request, and reimburse Landlord for its reasonable attorneys' fees and all other costs incurred in connection with considering any request for consent to a proposed Transfer. If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord Landlord's standard form transfer consent and agreement whereby the proposed transferee expressly assumes the Tenant's obligations hereunder. Landlord's consent to a Transfer shall not release Tenant from its obligations under this Lease (or any guarantor of this Lease of its obligations with respect thereto), but rather Tenant and its transferee shall be jointly and severally liable for all obligations under this Lease allocable to the space subject to such Transfer. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. In the event of any claim by Tenant that Landlord has breached its obligations under this Paragraph 9.1, Tenant's remedies shall be limited to recovery of its out-of-pocket damages and injunctive relief.

9.2 **Cancellation and Recapture**. Notwithstanding Paragraph 9.1, Landlord may (but shall not be obligated to), within ten (10) business days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or subject to an assignment of this Lease (**"Transfer Space"**) as of the date such proposed Transfer is proposed to be effective and, thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person or entity or not at all) without liability to Tenant. If Landlord shall not cancel this Lease within such ten (10) business day period and notwithstanding any Landlord consent to the proposed Transfer, Tenant shall pay to Landlord, immediately upon receipt thereof, the entire excess (**"Transfer Profits"**) of all compensation and other consideration paid to or for the benefit of Tenant (or any affiliate thereof) for the Transfer in excess of Base Rent and Additional Rent payable by Tenant hereunder (with respect to the Transfer Space) during the remainder of the Term (after straight-line amortization of any reasonable brokerage commissions and tenant improvement costs paid by Tenant in connection with the Transfer over the term of the Transfer). In any assignment or subletting undertaken by Tenant, Tenant shall diligently seek to obtain the maximum rental amount available in the marketplace for comparable space available for primary leasing.

10. **Insurance, Waivers, Subrogation and Indemnity.**

10.1 **Insurance**. Tenant shall maintain throughout the Term each of the insurance policies described on **Exhibit D** attached hereto and shall otherwise comply with the obligations and requirements provided on **Exhibit D.**

10.2 **Waiver of Subrogation**. Landlord and Tenant each waives any claim, loss or cost it might have against the other for any injury to or death of any person or persons, or damage to or theft, destruction, loss, or loss of use of any property (a **"Loss"**), to the extent the same is insured against (or is required to be insured against under the terms hereof) under any "all risk" property damage insurance policy covering the Building, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, regardless of whether the negligence of the other party caused such Loss.

10.3 **Indemnity**. Subject to Paragraph 10.2, Tenant shall indemnify, defend and hold Landlord, Spieker Properties, Inc., and each of their respective directors, shareholders, partners, lenders, members, managers, contractors, affiliates and employees (collectively, **"Landlord Indemnitees"**) from and against all claims, demands, proceedings, losses, obligations, liabilities, causes of action, suits, judgments, damages, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or asserted in connection with the use or occupancy of the Premises by Tenant or any Tenant Party, including, without limitation, by reason of any release of any Hazardous Materials by Tenant or any Tenant Party in, under, on, or about the Project, or any negligence or misconduct of Tenant or of any Tenant Party in or about the Premises, or Tenant's breach of any of its covenants under this Lease, except in each case to the extent arising from the gross negligence or willful misconduct of Landlord or any Landlord Indemnitee. Except to the extent expressly provided in this Lease, Tenant hereby waives all claims against and releases Landlord and each Landlord Indemnitee for any injury to or death of persons, damage to property or business loss in any manner related to (i) Tenant's use and occupancy of the Premises, (ii) acts of God, (iii) acts of third parties, or (iv) any matter outside of the reasonable control of Landlord. This Paragraph 10.3 shall survive termination or expiration of this Lease.

11. **Subordination; Attornment.**

11.1 **Subordination**. This Lease is subject and subordinate to all present and future ground or master leases of the Project and to the lien of all mortgages or deeds of trust (collectively, **"Security Instruments"**) now or hereafter encumbering the Project, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of any such Security Instruments, unless the holders of any such mortgages or deeds of trust, or the lessors under such ground or master leases (such holders and lessors are sometimes collectively referred to herein as **"Holders"**) require in writing that this Lease be superior thereto. Notwithstanding any provision of this Paragraph 11 to the contrary, any Holder of any Security Instrument may at any time subordinate the lien of its Security Instrument to this Lease without obtaining Tenant's consent by giving Tenant written notice of such subordination, in which event this Lease shall be deemed to be senior to the Security Instrument in question. Tenant shall, within fifteen (15) days of request to do so by Landlord, execute, acknowledge and deliver to Landlord such further instruments or assurances as Landlord may deem necessary or appropriate to evidence or confirm the subordination or superiority of this Lease to any such Security Instrument; provided, however, that at the request of Tenant made within five (5) days of any such Landlord request, Landlord shall use commercially reasonable efforts to obtain for the benefit of Tenant such Holder's standard nondisturbance agreement. Tenant hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument or instruments if Tenant fails to do so within said fifteen (15) day period.

11.2 **Attornment**. Tenant covenants and agrees that in the event that any proceedings are brought for the foreclosure of any mortgage or deed of trust, or if any ground or master lease is terminated, it shall attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or master lease, as the case may be, if so requested to do so by such purchaser or lessor, and to recognize such purchaser or lessor as "Landlord" under this Lease. If requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired portion of the Term then remaining).

12. **Rules and Regulations**. Tenant shall comply, and shall cause each Tenant Party to comply, with the Rules and Regulations of the Building which are attached hereto as **Exhibit A**, and all such nondiscriminatory modifications, additions, deletions and amendments thereto as Landlord shall adopt in good faith from time to time.

13. **Condemnation**. If the entire Project or Premises are taken by right of eminent domain or conveyed by Landlord in lieu thereof (a **"Taking"**), this Lease shall terminate as of the date of the Taking. If any part of the Project becomes subject to a Taking and such Taking will prevent Tenant from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than one hundred eighty (180) days, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking, and all Rent paid or payable hereunder shall be apportioned between Landlord and Tenant as of the date of such Taking. If any material portion, but less than all, of the Project, Building or the Premises becomes subject to a Taking, or if Landlord is required to pay any of the proceeds received for a Taking to any Holder of any Security Instrument, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking, and all Rent paid or payable hereunder shall be apportioned between Landlord and Tenant as of the date of such Taking. If this Lease is not so terminated, then Base Rent thereafter payable hereunder shall be abated for the duration of the Taking in proportion to that portion of the Premises rendered untenantable by such Taking. If any Taking occurs, then Landlord shall receive the entire award or other compensation for the land on which the Project is situated, the Project, and other improvements taken, and Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease and moving and relocation costs. Landlord and Tenant agree that the provisions of this Paragraph 13 and the remaining provisions of this Lease shall exclusively govern the rights and obligations of the parties with respect to any Taking of any portion of the Premises, the Building, the Project or the land on which the Building is located, and Landlord and Tenant hereby waive and release each and all of their respective common law and statutory rights inconsistent herewith, whether now or hereinafter in effect.

14. **Fire or Other Casualty.**

14.1 **Repair Estimate; Right to Terminate**. If all or any portion of the Premises, the Building or the Project is damaged by fire or other casualty (a **"Casualty"**), Landlord shall, within ninety (90) days after Landlord's discovery of such damage, deliver to Tenant its good faith estimate (the **"Damage Notice"**) of the time period following such notice needed to repair the damage caused by such Casualty. Landlord may elect to terminate this Lease in any case where (a) any portion of the Premises or any material portion of the Project are damaged and (b) either (i) Landlord estimates in good faith that the repair and restoration of such damage under Paragraph 14.2 (**"Restoration"**) cannot reasonably be completed (without the payment of overtime) within two hundred (200) days of Landlord's actual discovery of such damage, (ii) the Holder of any Security Instrument requires the application of any insurance proceeds with respect to such Casualty to be applied to the outstanding balance of the obligation secured by such Security Instrument, (iii) the cost of such Restoration is not fully covered by insurance proceeds available to Landlord and/or payments received by Landlord from tenants, or (iv) Tenant shall be entitled to an abatement of rent under this Paragraph 14 for any period of time in excess of thirty-three percent (33%) of the remainder of the Term. Such right of termination shall be exercisable by Landlord by delivery of written notice to Tenant at any time following the Casualty until forty-five (45) days following the later of (A) delivery of the Damage Notice or (B) Landlord's discovery or determination of any of the events described in clauses (i) through (iv) of the preceding sentence, and shall be effective upon delivery of such notice of termination (or if Tenant has not vacated the Premises, upon the expiration of thirty (30) days thereafter).

14.2 **Repair Obligation; Abatement of Rent**. Subject to the provisions of Paragraph 14.1, Landlord shall, within a reasonable time after the discovery by Landlord of any damage resulting from a Casualty, begin to repair the damage to the Building and the Premises resulting from such Casualty and shall proceed with reasonable diligence to restore the Building and Premises to substantially the same condition as existed immediately before such Casualty, except for modifications required by Regulations, and modifications to the Building or the Project reasonably deemed desirable by Landlord; provided, however,

that Landlord shall not be required as part of the Restoration to repair or replace any of the Alterations, furniture, equipment, fixtures, and other improvements which may have been placed by, or at the request of, Tenant or other occupants in the Building or the Premises. Landlord shall have no liability for any inconvenience or annoyance to Tenant or injury to Tenant's business as a result of any Casualty, regardless of the cause therefor. Base Rent, and Additional Rent payable under Paragraph 3.2, shall abate if and to the extent a Casualty damages the Premises or common areas in the Project required and essential for access thereto and as a result thereof all or a material portion of the Premises are rendered unfit for occupancy, and are not occupied by Tenant, for the period of time commencing on the date Tenant vacates the portion of the Premises affected on account thereof and continuing until the date the Restoration to be performed by Landlord with respect to the Premises (and/or required common areas) is substantially complete, as determined by Landlord's architect. Landlord and Tenant agree that the provisions of this Paragraph 14 and the remaining provisions of this Lease shall exclusively govern the rights and obligations of the parties with respect to any and all damage to, or destruction of, all or any portion of the Premises or the Project by Casualty, and Landlord and Tenant hereby waive and release each and all of their respective common law and statutory rights inconsistent herewith, whether now or hereinafter in effect.

15. **Parking**. Tenant shall have the right to the nonexclusive use of such portion of the parking facilities of the Project as are designated by Landlord from time to time for such purpose for the parking of passenger-size motor vehicles used by Tenant and Tenant Parties only and are not transferable without Landlord's approval. The use of such parking facilities shall be subject to the parking rules and regulations, as such rules and regulations may be modified by Landlord from time to time, for the use of such facilities. Tenant and the Tenant Parties shall not use more than Tenant's allocated number of parking spaces (based on the parking density for the Project established by Landlord) at any time. **Tenant shall have the use of up to and not exceeding two (2) unreserved parking stalls based upon the building's parking ratio of .75/1,000 rentable square feet, at the prevailing monthly market rate per stall.**

16. **Events of Default**. Each of the following occurrences shall be an **"Event of Default"** and shall constitute a material default and breach of this Lease by Tenant: (a) any failure by Tenant to pay any installment of Base Rent, Additional Rent or to make any other payment required to be made by Tenant hereunder when due; (b) the abandonment or vacation of the Premises by Tenant, provided, however, that unless Tenant is using the Premises for a retail use, abandonment or vacation of the Premises shall not be an Event of Default so long as no other Event of Default has occurred hereunder and provided Tenant has given Landlord five (5) days' prior written notice of its intent to vacate the Premises; (c) any failure by Tenant to execute and deliver any estoppel certificate or other document or instrument described in Paragraphs 10 (insurance), 11 (subordination) or 21.2 (estoppel certificates) requested by Landlord, where such failure continues for five (5) days after delivery of written notice of such failure by Landlord to Tenant; (d) any failure by Tenant to fully perform any other obligation of Tenant under this Lease, where such failure continues for thirty (30) days (except where a shorter period of time is specified in this Lease, in which case such shorter time period shall apply) after delivery of written notice of such failure by Landlord to Tenant; (e) the voluntary or involuntary filing of a petition by or against Tenant or any general partner of Tenant (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under any state or federal debtor relief law, (iii) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease, or (iv) for the reorganization or modification of Tenant's capital structure (provided, however, that if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within sixty (60) days after the filing thereof); (f) the default of any guarantor of Tenant's obligations hereunder under any guaranty of this Lease, the attempted repudiation or revocation of any such guaranty, or the participation by any such guarantor in any other event described in this Paragraph 16 (as if this Paragraph 16 referred to such guarantor in place of Tenant); or (g) any other event, act or omission which any other provision of this Lease identifies as an Event of Default. Any notice of any failure of Tenant required under this Paragraph 16 shall be in lieu of, and not in addition to, any notice required under any Regulation.

17. **Remedies**. Upon the occurrence of any Event of Default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate, and cumulative), the option to pursue any one (1) or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

(a) Terminate this Lease, and Landlord may recover from Tenant the following: (i) the worth at the time of any unpaid rent which has been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom (specifically including, without limitation, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant); and (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. The term **"rent"** as used in this Paragraph 17(a) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 17(a)(i) and (ii), above, the **"worth at the time of award"** shall be computed by allowing interest at the Default Rate, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 17(a)(iii) above, the **"worth at the time of award"** shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) If Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

(c) Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Paragraphs 17(a) and 17(b) above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive, or other equitable relief, to use self-help remedies, and to specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

(d) Following the occurrence of three instances of payment of Rent more than ten (10) days late in any twelve (12) month period, the late charge set forth in Paragraph 4 shall apply from the date payment was due and Landlord may, without prejudice to any other rights or remedies available to it, upon written notice to Tenant, require that all remaining monthly installments of Rent payable under this Lease shall be payable by cashier's check or electronic funds transfer three (3) months in advance, and may require that Tenant increase the Security Deposit to an amount equal to three times the current month's Rent at the time of the most recent default. In addition, (i) upon the occurrence of an Event of Default by Tenant, if the Premises or any portion thereof are sublet, Landlord may, at its option and in addition and without prejudice to any other remedies herein provided or provided by law, collect directly from the sublessee(s) all rentals becoming due to the Tenant and apply such rentals against other sums due hereunder to Landlord; (ii) without prejudice to any other right or remedy of Landlord, if Tenant shall be in default under this Lease, Landlord may cure the same at the expense of Tenant (A) immediately and without notice in the case (1) of emergency, (2) where such default unreasonably interferes with any other tenant in the Building, or (3) where such default will result in the violation of any Regulation or the cancellation of any insurance policy maintained by Landlord, and (B) in any other case if such default continues for ten (10) days following the receipt by Tenant of notice of such default from Landlord and all costs incurred by Landlord in curing such default(s), including, without limitation, attorneys' fees, shall be reimbursable by Tenant as Rent hereunder upon demand, together with interest thereon, from the date such costs were incurred by Landlord, at the Default Rate; and (iii) Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now and hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

18. **Surrender of Premises**. No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or earlier termination of this Lease, Tenant shall deliver to Landlord all keys (including any electronic access devices and the like) to the Premises, and Tenant shall deliver to Landlord the Premises in the same condition as existed on the date Tenant originally took possession thereof, ordinary wear and tear excepted, provided that ordinary wear and tear shall not include repair and clean up items. By way of example, but without limitation, repair and clean up items shall include cleaning of all interior walls, carpets and floors, replacement of damaged or missing ceiling or floor tiles, window coverings or cover plates, removal of any Tenant-introduced markings, and repair of all holes and gaps and repainting required thereby, as well as the removal requirements below. In addition, prior to the expiration of the Term or any sooner termination thereof, (a) Tenant shall remove such Alterations as Landlord shall request and shall restore the portion of the Premises affected by such Alterations and such removal to its condition existing immediately prior to the making of such Alterations, (b) Tenant shall remove from the Premises all unattached trade fixtures, furniture, equipment and personal property located in the Premises, including, without limitation, phone equipment, wiring, cabling and all garbage, waste and debris, and (c) Tenant shall repair all damage to the Premises or the Project caused by any such removal including, without limitation, full restoration of all holes and gaps resulting from any such removal and repainting required thereby. All personal property and fixtures of Tenant not so removed shall, to the extent permitted under applicable Regulations, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items.

19. **Holding Over**. If Tenant holds over after the expiration or earlier termination of the Term hereof, with or without the express or implied consent of Landlord, Tenant shall become and be only a tenant at sufferance at a daily rent equal to one-thirtieth of the greater of (a) the then prevailing monthly fair market rental rate as determined by Landlord in its sole and absolute discretion, or (b) two hundred percent (200%) of the monthly installment of Base Rent (and estimated Additional Rent payable under Paragraph 3.2) payable by Tenant immediately prior to such expiration or termination, and otherwise upon the terms, covenants and conditions herein specified, so far as applicable, as reasonably determined by Landlord. Neither any provision hereof nor any acceptance by Landlord of any Rent after any such expiration or earlier termination (including, without limitation, through any "lockbox") shall be deemed a consent to any holdover hereunder or result in a renewal of this Lease or an extension of the Term, or any waiver of any of Landlord's rights or remedies with respect to such holdover. Notwithstanding any provision to the contrary contained herein, (i) Landlord expressly reserves the right to require Tenant to surrender possession of the Premises upon the expiration of the Term or upon the earlier termination hereof or at any time during any holdover, and the right to assert any remedy at law or in equity to evict Tenant and collect damages in connection with any such holdover, and (ii) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, actions, proceedings, losses, damages, liabilities, obligations, penalties, costs and expenses, including, without limitation, all lost profits and other consequential damages, attorneys' fees, consultants' fees and court costs incurred or suffered by or asserted against Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

20. **Substitution Space**. Upon at least sixty (60) days' prior written notice, Landlord may relocate Tenant within the Project (or to any other facility owned by Landlord within the vicinity of the Project) to space which is comparable in size, utility and condition to the Premises. If Landlord relocates Tenant, Landlord shall (a) reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving Tenant's furniture, equipment and supplies from the Premises to the relocation space and for reprinting Tenant's stationery of the same quality and quantity as Tenant's stationery supply on hand immediately before Landlord's notice to Tenant of the exercise of this relocation right, and (b) improve the relocation space with improvements substantially similar to those Landlord is committed to provide or has provided in the Premises under this Lease. Upon such relocation, the relocation space shall be deemed to be the Premises and the terms of this Lease shall remain in full force and shall apply to the relocation space; provided, however, that (i) if the rentable area of the relocation space is smaller than rentable area of the Premises, then Tenant shall be entitled (from and after the relocation date) to a reduction in Base Rent in proportion to the reduction in the rentable area of the Premises, with a corresponding reduction in Tenant's Proportionate Share and (ii) if the rentable area of the relocation space is larger than the rentable area of the Premises, then the Base Rent and Tenant's Proportionate Share shall not be modified in any way.

21. **Miscellaneous.**

21.1 **Landlord Transfers and Liability**. Landlord may, without restriction, sell, assign or transfer in any manner all or any portion of the Project, any interest therein or any of Landlord's rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall automatically be released from any further obligations hereunder, provided that the assignee thereof assumes in writing all of Landlord's obligations hereunder accruing after such assignment. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease or with respect to any obligation or liability related to the Premises or the Project shall be recoverable only from the interest of Landlord in the Project, and neither Landlord nor any affiliate thereof shall have any personal liability with respect thereto and in no case shall Landlord be liable to Tenant for any lost profits, damage to business, or any form of special, indirect or consequential damage on account of any breach of this Lease.

21.2 **Estoppel Certificates; Financial Statements**. At any time and from time to time during the Term, Tenant shall, without charge, execute, acknowledge and deliver to Landlord within ten (10) days after Landlord's request therefor, an estoppel certificate in recordable form containing such factual certifications and other provisions as are found in the estoppel certificate forms requested by institutional lenders and purchasers. Tenant agrees in any case that (a) the foregoing certificate may be relied on by anyone holding or proposing to acquire any interest in the Project from or through Landlord or by any mortgagee or lessor or prospective mortgagee or lessor of the Project or of any interest therein and (b) the form of estoppel certificate shall be in the form of, at Landlord's election, the standard form of such present or prospective lender, lessor or purchaser (or any form substantially similar thereto), or any other form that Landlord shall reasonably select. At the request of Landlord from time to time, Tenant shall provide to Landlord within ten (10) days of Landlord's request therefor Tenant's and any guarantor's current financial statements.

21.3 **Notices**. Notices, requests, consents or other communications desired or required to be given by or on behalf of Landlord or Tenant under this Lease shall be effective only if given in writing and sent by (a) registered or certified United States mail, postage prepaid, (b) nationally recognized express mail courier that provides written evidence of delivery, fees prepaid, or (c) facsimile and United States mail, postage prepaid, and addressed as set forth in the Basic Lease Information, or at such other address in the State of Oregon as may be specified from time to time, in writing, or, if to Tenant, at the Premises. Any such notice, request, consent, or other communication shall only be deemed given (i) if sent by registered or certified United States mail, on the day it is officially delivered to or refused by the intended recipient, (ii) if sent by nationally recognized express mail courier, on the date it is officially recorded by such courier, (iii) if delivered by facsimile, on the date the sender obtains written telephonic confirmation that the electronic transmission was received, or (iv) if delivered personally, upon delivery or, if refused by the intended recipient, upon attempted delivery.

21.4 **Payment by Tenant; Non-Waiver**. Landlord's acceptance of Rent (including, without limitation, through any "lockbox") following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such terms. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

21.5 **Certain Rights Reserved by Landlord**. Landlord hereby reserves and shall have the following rights with respect to the Premises and the Project: (a) to decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Project, the Building, the Premises or any part thereof; to enter upon the Premises and, during the continuance of any such work, to temporarily close doors, entryways, public space, and corridors in the Project or the Building; to interrupt or suspend temporarily Building services and facilities; to change the name of the Building or the Project; and to change the arrangement and location of entrances or passageways, doors, and doorways, corridors, elevators, stairs, restrooms, common areas, or other public parts of the Building or the Project; (b) to take such measures as Landlord deems advisable in good faith for the security of the Building and its occupants; to temporarily deny access to the Building to any person; and to close the Building after ordinary business hours and on Sundays and Holidays, subject, however, to Tenant's right to enter when the Building is closed after ordinary business hours under such rules and regulations as Landlord may reasonably prescribe from time to time during the Term; and (c) to enter the Premises at reasonable hours (or at any time in an emergency) to perform repairs, to take any action authorized hereunder, or to show the Premises to prospective purchasers or lenders, or, during the last six (6) months of the Term**,** prospective tenants.

21.6 **Miscellaneous**. If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby. This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Tenant and the person or persons signing on behalf of Tenant represent and warrant that Tenant has full right and authority to enter into this Lease, and that all persons signing this Lease on its behalf are authorized to do so. If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All exhibits and attachments attached hereto are incorporated herein by this reference. This Lease shall be governed by and construed in accordance with the laws of the State of Oregon. In any action which Landlord or Tenant brings to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including without limitation, reasonable attorneys' fees and court costs. Landlord is a real estate organization licensed by the State of Oregon. Tenant shall not record this Lease or any memorandum hereof. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR WITH RESPECT TO THIS LEASE.** Submission of this Lease to Tenant does not constitute an option or offer to lease and this Lease is not effective otherwise until execution and delivery by both Landlord and Tenant. This Lease may be executed in any number of counterparts, each of which shall be deemed an original. Time is of the essence as to the performance of each covenant hereunder in which time of performance is a factor.

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EXHIBIT A

RULES AND REGULATIONS

1. Driveways, sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by tenants or used by tenants for any purpose other than for ingress to and egress from their respective premises. The driveways, sidewalks, halls, passages, exits, entrances, elevators and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building, the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of such tenant's business unless such persons are engaged in illegal activities. No tenant, and no employees or invitees of any tenant, shall go upon the roof of any Building, except as authorized by Landlord. No tenant, and no employees or invitees of any tenant shall move any common area furniture without Landlord's consent.

2. No sign, placard, banner, picture, name, advertisement or notice, visible from the exterior of the Premises or the Building or the common areas of the Building shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant either on its Premises or any part of the Building or Project without the prior written consent of Landlord in Landlord's sole and absolute discretion. Landlord shall have the right to remove any such sign, placard, banner, picture, name, advertisement, or notice without notice to and at the expense of Tenant, which were installed or displayed in violation of this rule. If Landlord shall have given such consent to Tenant at any time, whether before or after the execution of Tenant's Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of the Lease, and shall be deemed to relate only to the particular sign, placard, banner, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, banner, picture, name, advertisement or notice.

   All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person or vendor approved by Landlord and shall be removed by Tenant at the time of vacancy at Tenant's expense.

3. The directory of the Building or Project will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to charge for the use thereof and to exclude any other names therefrom.

4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in connection with, any window or door on the Premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, all such items shall be installed inboard of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent or of a quality, type, design, and bulb color approved by Landlord. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which Landlord considers unsightly from outside Tenant's Premises.

5. Landlord reserves the right to exclude from the Building and the Project, between the hours of 6 p.m. and 8 a.m. and at all hours on Saturdays, Sundays and legal holidays, all persons who are not tenants or their accompanied guests in the Building. Each tenant shall be responsible for all persons for whom it allows to enter the Building or the Project and shall be liable to Landlord for all acts of such persons.

   Landlord and its agents shall not be liable for damages for any error concerning the admission to, or exclusion from, the Building or the Project of any person.

During the continuance of any invasion, mob, riot, public excitement or other circumstance rendering such action advisable in Landlord's opinion, Landlord reserves the right (but shall not be obligated) to prevent access to the Building and the Project during the continuance of that event by any means it considers appropriate for the safety of tenants and protection of the Building, property in the Building and the Project.

6. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness of its Premises. Landlord shall in no way be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to Tenant's property by the janitor or any other employee or any other person.

7. Tenant shall see that all doors of its Premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus, coffee pots or other heat-generating devices are entirely shut off before Tenant or its employees leave the Premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or Project or by Landlord for noncompliance with this rule. On multiple–tenancy floors, all tenants shall keep the door or doors to the Building corridors closed at all times except for ingress and egress.

8. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord. As more specifically provided in Tenant's lease of the Premises, Tenant shall not waste electricity, water or air–conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air–conditioning, and shall refrain from attempting to adjust any controls other than room thermostats installed for Tenant's use.

9. Landlord will furnish Tenant free of charge with two keys to each door in the Premises. Landlord may make a reasonable charge for any additional keys, and Tenant shall not make or have made additional keys. Tenant shall not alter any lock or access device or install a new or additional lock or access device or bolt on any door of its Premises, without the prior written consent of Landlord. If Landlord shall give its consent, Tenant shall in each case furnish Landlord with a key for any such lock. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys for all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

10. The restrooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused the breakage, stoppage, or damage.

11. Tenant shall not use or keep in or on the Premises, the Building or the Project any kerosene, gasoline, or inflammable or combustible fluid or material.

12. Tenant shall not use, keep or permit to be used or kept in its Premises any foul or noxious gas or substance. Tenant shall not allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord 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 brought or kept in or about the Premises, the Building, or the Project.

13. No cooking shall be done or permitted by any tenant on the Premises, except that use by the tenant of Underwriters' Laboratory (UL) approved equipment, refrigerators and microwave ovens may be used in the Premises for the preparation of coffee, tea, hot chocolate and similar beverages, storing and heating food for tenants and their employees shall be permitted. All uses must be in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations and the Lease.

14. Except with the prior written consent of Landlord, Tenant shall not sell, or permit the sale, at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on the Premises, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for the storage of merchandise or for manufacturing of any kind, or the business of a public barber shop, beauty parlor, nor shall the Premises be used for any illegal, improper, immoral or objectionable purpose, or any business or activity other than that specifically provided for in such Tenant's Lease. Tenant shall not accept hairstyling, barbering, shoeshine, nail, massage or similar services in the Premises or common areas except as authorized by Landlord.

15. If Tenant requires telegraphic, telephonic, telecommunications, data processing, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions in their installation. The cost of purchasing, installation and maintenance of such services shall be borne solely by Tenant.

16. Landlord will direct electricians as to where and how telephone, telegraph and electrical wires are to be introduced or installed. No boring or cutting for wires will be allowed without the prior written consent of Landlord. The location of burglar alarms, telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

17. Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or any other device on the exterior walls or the roof of the Building, without Landlord's consent. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building, the Project or elsewhere.

18. Tenant shall not mark, or drive nails, screws or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's consent. Tenant may install nails and screws in areas of the Premises that have been identified for those purposes to Landlord by Tenant at the time those walls or partitions were installed in the Premises. Tenant shall not lay linoleum, tile, carpet or any other floor covering so that the same shall be affixed to the floor of its Premises in any manner except as approved in writing by Landlord. The expense of repairing any damage resulting from a violation of this rule or the removal of any floor covering shall be borne by the tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.

19. No furniture, freight, equipment, materials, supplies, packages, merchandise or other property will be received in the Building or carried up or down the elevators except between such hours and in such elevators as shall be designated by Landlord.

Tenant shall not place a load upon any floor of its Premises which exceeds the load per square foot which such floor was designed to carry or which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all safes, furniture or other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as determined by Landlord to be necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe, equipment or property from any cause, and all damage done to the Building by moving or maintaining any such safe, equipment or other property shall be repaired at the expense of Tenant.

Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable to Landlord.

20. Tenant shall not install, maintain or operate upon its Premises any vending machine without the written consent of Landlord.

21. There shall not be used in any space, or in the public areas of the Project either by Tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Landlord may approve. Tenants using hand trucks shall be required to use the freight elevator, or such elevator as Landlord shall designate. No other vehicles of any kind shall be brought by Tenant into or kept in or about its Premises.

22. Each tenant shall store all its trash and garbage within the interior of the Premises. Tenant shall not place in the trash boxes or receptacles any personal trash or any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city, without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes and at such times as Landlord shall designate. If the Building has implemented a building-wide recycling program for tenants, Tenant shall use good faith efforts to participate in said program.

23. Canvassing, soliciting, distribution of handbills or any other written material and peddling in the Building and the Project are prohibited and each tenant shall cooperate to prevent the same. No tenant shall make room–to–room solicitation of business from other tenants in the Building or the Project, without the written consent of Landlord.

24. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and address of the Building and the Project.

25. Landlord reserves the right to exclude or expel from the Project any person who, in Landlord's judgment, is under the influence of alcohol or drugs or who commits any act in violation of any of these Rules and Regulations.

26. Without the prior written consent of Landlord, Tenant shall not use the name of the Building or the Project or any photograph or other likeness of the Building or the Project in connection with, or in promoting or advertising, Tenant's business except that Tenant may include the Building's or Project's name in Tenant's address.

27. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

28. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

29. The requirements of Tenant will be attended to only upon appropriate application at the office of the Building by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employees of Landlord will admit any person (tenant or otherwise) to any office without specific instructions from Landlord.

30. Landlord reserves the right to designate the use of the parking spaces on the Project. Tenant or Tenant's guests shall park between designated parking lines only, and shall not occupy two parking spaces with one car. Parking spaces shall be for passenger vehicles only; no boats, trucks, trailers, recreational vehicles or other types of vehicles may be parked in the parking areas (except that trucks may be loaded and unloaded in designated loading areas). Vehicles in violation of the above shall be subject to tow–away, at vehicle owner's expense. Vehicles parked on the Project overnight without prior written consent of the Landlord shall be deemed abandoned and shall be subject to tow–away at vehicle owner's expense. No tenant of the Building shall park in visitor or reserved parking areas. Any tenant found parking in such designated visitor or reserved parking areas or unauthorized areas shall be subject to tow-away at vehicle owner's expense. The parking areas shall not be used to provide car wash, oil changes, detailing, automotive repair or other services unless otherwise approved or furnished by Landlord. Tenant will from time to time, upon the request of Landlord, supply Landlord with a list of license plate numbers of vehicles owned or operated by its employees or agents.

31. No smoking of any kind shall be permitted anywhere within the Building, including, without limitation, the Premises and those areas immediately adjacent to the entrances and exits to the Building, or any other area as Landlord elects. Smoking in the Project is only permitted in smoking areas identified by Landlord, which may be relocated from time to time.

32. If the Building furnishes common area conferences rooms for tenant usage, Landlord shall have the right to control each tenant's usage of the conference rooms, including limiting tenant usage so that the rooms are equally available to all tenants in the Building. Any common area amenities or facilities shall be provided from time to time at Landlord's discretion.

33. Tenant shall not swap or exchange building keys or cardkeys with other employees or tenants in the Building or the Project.

34. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

35. These Rules and Regulations are in addition to, and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Project.

36. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building.

Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and the Project and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations herein stated and any additional rules and regulations which are adopted.

EXHIBIT B

FLOOR PLAN

EXHIBIT C

LEASE IMPROVEMENT AGREEMENT

1. In consideration of the mutual covenants contained in the Lease of which this **Exhibit C** is a part, Landlord agrees to perform the following initial tenant improvement work in the Premises ("**Tenant Improvements**")

- **Clean carpets throughout the Premises.**
- **Provide touch-up paint where necessary within the Premises.**
- **Provide a total of two (2) new duplex electrical outlets, as shown on the attached Exhibit B.**
- **All other improvements are subject to Landlord's review and approval, and shall be made at Tenant's sole cost and responsibility.**

2. All the Tenant Improvements described above shall be performed by Landlord at its cost and expense using Building Standard materials and in the Building Standard manner. As used herein, "Building Standard" shall mean the standards for a particular item selected from time to time by Landlord for the Building or such other standards as may be mutually agreed upon between Landlord and Tenant in writing.

3. Without limiting the "as-is" provisions of the Lease, Tenant accepts the Premises in its "as-is" condition and acknowledges that Landlord has no obligation to make any changes or improvements to the Premises or to pay any costs expended or to be expended in connection with any such changes or improvements, other than the Tenant Improvements specified in Paragraph 1 of this **Exhibit C**.

4. Tenant shall not perform any work in the Premises (including, without limitation, cabling, wiring, fixturization, painting, carpeting, replacements or repairs) except in accordance with Paragraph 7.1 of the Lease.

EXHIBIT D

INSURANCE

Tenant's Insurance. Tenant shall, at Tenant's sole cost and expense, procure and keep in effect from the date of this Lease and at all times until the end of the Term, the following insurance coverage:

1. **Property Insurance**. Insurance on all personal property and fixtures of Tenant and all improvements made by or for Tenant to the Premises on an "All

Risk" or "Special Form" basis, for the full replacement value of such property.

2. **Liability Insurance.** Commercial General Liability insurance written on an ISO CG 00 01 10 93 or equivalent form, on an occurrence basis, with a per occurrence limit of at least $2,000,000, and a minimum general aggregate limit of at least $3,000,000, covering bodily injury and property damage liability occurring in or about the Premises or arising out of the use and occupancy of the Premises or the Project by Tenant or any Tenant Party. Such insurance shall include contractual liability coverage insuring Tenant's indemnity obligations under this Lease, and shall be endorsed to name Landlord, any Holder of a Security Instrument and any other party specified by Landlord as an additional insured with regard to liability arising out of the ownership, maintenance or use of the Premises.

3. **Worker's Compensation and Employer's Liability Insurance.** (a) Worker's Compensation Insurance as required by any Regulation, and (b) Employer's Liability Insurance in amounts not less than $1,000,000 each accident for bodily injury by accident and for bodily injury by disease, and for each employee for bodily injury by disease.

4. **Commercial Auto Liability Insurance.** Commercial auto liability insurance with a combined limit of not less than One Million Dollars ($1,000,000) for bodily injury and property damage for each accident. Such insurance shall cover liability relating to any auto (including owned, hired and non-owned autos).

5. **Alterations Requirements.** In the event Tenant shall desire to perform any Alterations, Tenant shall deliver to Landlord, prior to commencing such Alterations (i) evidence satisfactory to Landlord that Tenant carries "Builder's Risk" insurance covering construction of such Alterations in an amount and form approved by Landlord, (ii) such other insurance as Landlord shall nondiscriminatorily require, and (iii) a lien and completion bond or other security in form and amount satisfactory to Landlord.

6. **General Insurance Requirements.** All Tenant's coverages described in this **Exhibit D** shall be endorsed to (i) provide Landlord with thirty (30) days' notice of cancellation or change in terms; (ii) waive all rights of subrogation by the insurance carrier against Landlord; and (iii) be primary and non-contributing with Landlord's insurance. If at any time during the Term the amount or coverage of insurance which Tenant is required to carry under this **Exhibit D** is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or tenants of properties located in the general area in which the Premises are located which are similar to and operated for similar purposes as the Premises or if Tenant's use of the Premises should change with or without Landlord's consent, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required under this **Exhibit D**. All insurance policies required to be carried by Tenant under this Lease shall be written by companies rated AVII or better in "Best's Insurance Guide" and authorized to do business in the State of Oregon. Deductible amounts under all insurance policies required to be carried by Tenant under this Lease shall not exceed $10,000 per occurrence. Tenant shall deliver to Landlord on or before the Term Commencement Date, and thereafter at least thirty (30) days before the expiration dates of the expired policies, certified copies of Tenant's insurance policies, or a certificate evidencing the same issued by the insurer thereunder, and, if Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at Landlord's option and in addition to Landlord's other remedies in the event of a default by Tenant under the Lease, procure the same for the account of Tenant, and the cost thereof (with interest thereon at the Default Rate) shall be paid to Landlord as Additional Rent.

Landlord's Insurance. All insurance maintained by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control.

1. **Property Insurance.** Landlord agrees to maintain property insurance insuring the Building against damage or destruction due to risk including fire, vandalism, and malicious mischief in an amount not less than the replacement cost thereof, in the form and with deductibles and endorsements as selected by Landlord. At its election, Landlord may instead (but shall have no obligation to) obtain "All Risk" coverage, and may also obtain earthquake, pollution, and/or flood insurance in amounts selected by Landlord.

2. **Optional Insurance**. Landlord, at Landlord's option, may also (but shall have no obligation to) carry (i) insurance against loss of rent, in an amount equal to the amount of Base Rent and Additional Rent that Landlord could be required to abate to all Building tenants in the event of condemnation or casualty damage for a period of twelve (12) months; and (ii) liability insurance and such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Landlord shall determine. Landlord shall not be obligated to insure, and shall have no responsibility whatsoever for any damage to, any furniture, machinery, goods, inventory or supplies, or other personal property or fixtures which Tenant may keep or maintain in the Premises, or any leasehold improvements, additions or alterations within the Premises.

INVESTMENT AGREEMENT [1]

THIS INVESTMENT AGREEMENT (this "Agreement") is made and entered into as of May 22, 2001 between AVI BIOPHARMA, INC. ("AVI"), an Oregon corporation, and MEDTRONIC ASSET MANAGEMENT, INC. ("Investor"), a Minnesota corporation.

RECITALS

WHEREAS, AVI desires to issue and sell to Investor, and Investor desires to purchase on the terms and subject to the conditions set forth in this Agreement, certain shares of AVI Common Stock, $0.0001 par value ("Common Stock") and a warrant to purchase certain shares of Common Stock in the form attached hereto as **Exhibit A** (the "Warrant");

WHEREAS, at the First Closing (as defined below), Medtronic, Inc. ("Medtronic") and AVI are entering into a License and Development Agreement in the form attached hereto as **Exhibit B** (the "License and Development Agreement");

WHEREAS, at the First Closing, Investor and AVI are also entering into a Supply Agreement in the form attached hereto as **Exhibit C** (the "Supply Agreement");

WHEREAS, at the First Closing, Investor and AVI are also entering into a Registration Rights Agreement in the form attached hereto as **Exhibit D** (the "Registration Rights Agreement"); and

AGREEMENT

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Affiliate" of a specified person (natural or juridical) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

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[1] Information was omitted from this document pursuant to a request for confidential treatment submitted to the SEC; omitted information is marked with ***. The omitted material has been filed separately with the SEC.

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

"AVI Subsidiaries" means all subsidiaries of AVI, including but not limited to the subsidiaries identified in the Disclosure Schedule.

"Change of Control" with respect to AVI means the occurrence of any of the following:

(a) a sale of assets representing fifty percent (50%) or more of the net book value and of the fair market value of AVI's consolidated assets (in a single transaction or in a series of related transactions);

(b) a liquidation or dissolution of AVI;

(c) a merger or consolidation involving AVI or any subsidiary of AVI after the completion of which: (i) in the case of a merger (other than a triangular merger) or a consolidation involving AVI, the shareholders of AVI immediately prior to the completion of such merger or consolidation beneficially own (within the meaning of Rule 13d-3 promulgated under the Exchange Act or comparable successor rules), directly or indirectly, outstanding voting securities representing less than fifty percent (50%) of the combined voting power of the surviving entity in such merger or consolidation, and (ii) in the case of a triangular merger involving AVI or a subsidiary of AVI, the shareholders of AVI immediately prior to the completion of such merger beneficially own (within the meaning of Rule 13d-3 promulgated under the Exchange Act, or comparable successor rules), directly or indirectly, outstanding voting securities representing less than fifty percent (50%) of the combined voting power of the surviving entity in such merger and less than fifty percent (50%) of the combined voting power of the parent of the surviving entity in such merger;

(d) an acquisition by any person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act or any comparable successor provisions), other than any employee benefit plan, or related trust, sponsored or maintained by AVI or an affiliate of AVI and other than in a merger or consolidation of the type referred to in clause "(c)" of this definition of Change of Control, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act, or comparable successor rules) of outstanding voting securities of AVI representing more than thirty-three and 1/3 percent (33-1/3%) of the combined voting power of AVI (in a single transaction or series of related transactions); or

(e) individuals who, as of the date hereof or replacements therefore who have been initially nominated by the then current members of the AVI Board of Directors, are members of the AVI Board of Directors (the "Incumbent Board"), cease for any reason to constitute at least sixty percent (60%) of the AVI Board of Directors, provided that if election, or nomination for election by AVI's shareholders, of any new member of the AVI Board of Directors is approved by a vote of at least sixty percent (60%) of the Incumbent Board, such new member of the Board shall be considered as a member of the Incumbent Board.

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

"Common Stock" means shares of Common Stock of AVI, par value $0.0001 per share.

"Confidential Information" means know-how, trade secrets, unpublished information, scientific and technical information, inventions, methods, plans, processes, characteristics, data, business plans and the like disclosed (whether before or during the term of this Agreement) by one of the parties (the "disclosing party") to the other party (the "receiving party") or generated under this Agreement or the other Transaction Documents, excluding information which:

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

(b) is or becomes part of the public domain by reason of acts not attributable to the receiving party;

(c) is or becomes available to receiving party from a source other than the disclosing party which source, has rightfully obtained such information and has no obligation of non-disclosure or confidentiality to the disclosing party with respect thereto; or

(d) has been independently developed by the receiving party without breach of this Agreement or use of any Confidential Information of the other party.

"Drug" has the meaning given such term in the License and Development Agreement.

"Disclosure Schedule" has the meaning given in Article 3.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder.

"Environmental Laws or Regulations" means any one or more of the following: the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. § 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6921 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; any other federal, state, county, municipal, local, foreign or other statute, law, ordinance or regulation which may relate to pesticides, agricultural or industrial chemicals, wastes, Hazardous Substances, or the environment; and all regulations promulgated by a regulatory body pursuant to any of the foregoing statutes, laws, regulations, or ordinances.

"FDA" means the U.S. Food and Drug Administration.

"Financial Statements" means AVI's financial statements included in SEC Documents.

"First Closing" has the meaning given in Section 8.1.

"First Closing Date" has the meaning given in Section 8.1

"Fourth Closing" has the meaning given in Section 8.4.

"Fourth Closing Date" has the meaning given in Section 8.4.

"Fourth Closing Milestone" means * * *

"Fourth Closing Market Price" means the average (rounded to the nearest full cent, with the cents rounded up if the third decimal place is 5 or more) of the closing sale prices of a share of Common Stock as reported on the Nasdaq Stock Market as of the end of the regular trading session, as reported in The Wall Street Journal, for the five (5) consecutive Nasdaq trading days ending on and including the Nasdaq trading day immediately preceding the date of the occurrence of the Fourth Closing Milestone.

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

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations thereunder.

"IND" means an Investigational New Drug application as defined in 21 CFR Part 312.

"Initial Market Price" means the greater of (a) $5.00 per share of Common Stock, or (b) the average (rounded to the nearest full cent, with the cents rounded up if the third decimal place is 5 or more) of the closing sale prices of a share of Common Stock as reported on the Nasdaq Stock Market as of the end of the regular trading session, as reported in The Wall Street Journal, for the five (5) consecutive Nasdaq trading days ending on and including the Nasdaq trading day immediately preceding the date of this Agreement. It is acknowledged and agreed that the Initial Market Price is $7.10 per share.

"Intellectual Property" means letters patent and patent applications; trademarks, service marks and registrations thereof and applications therefor; copyrights and copyright registrations and applications; all discoveries, ideas, technology, know–how, trade secrets, processes, formulas, drawings and designs, computer programs or software; and all amendments, modifications, and improvements to any of the foregoing.

"Knowledge" or "knowledge" means actual knowledge of a fact or the knowledge which such person could reasonably be expected to have based on reasonable inquiry and consistent with such person's duties and responsibilities. The knowledge of AVI shall include the knowledge of AVI's directors and/or officers.

"License and Development Agreement" has the meaning defined in the recitals hereto.

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

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, results of operations, assets (including intangible assets), liabilities, prospects, or condition (financial or otherwise) of AVI and the AVI Subsidiaries, taken as a whole, or (b) the ability of AVI to perform its obligations under this Agreement or any of the Transaction Documents or any other agreement or instrument to be entered into in connection with this Agreement.

"Medtronic" has the meaning defined in the recitals hereto.

"NDA" means a New Drug Application as defined in 21 CFR Part 314.

"PMA" means a Premarket Approval Application as defined in 21 CFR Part 814.

"Purchased Securities" means the Purchased Shares, the Warrant and the Warrant Shares.

"Purchased Shares" means the Common Stock Shares purchased by Investor pursuant to Article 2.

"Registration Rights Agreement" has the meaning defined in the Recitals hereto.

"SEC" means the Securities and Exchange Commission or any other federal agency at the time administering the Exchange Act.

"SEC Documents" means all documents filed by AVI with the SEC after December 31, 2000.

"Second Closing" has the meaning given in Section 8.2.

"Second Closing Date" has the meaning given in Section 8.2.

"Second Closing Milestone" means * * *

"Securities Act" means the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

"Supply Agreement" has the meaning defined in the recitals hereto.

"Third Closing" has the meaning given in Section 8.3.

"Third Closing Date" has the meaning given in Section 8.3.

"Third Closing Milestone" means * * *

"Third Closing Market Price" means the average (rounded to the nearest full cent, with the cents rounded up if the third decimal place is 5 or more) of the closing sale prices of a share of Common Stock as reported on the Nasdaq Stock Market as of the end of the regular trading session, as reported in The Wall Street Journal, for the five (5) consecutive Nasdaq trading days ending on and including the Nasdaq trading day immediately preceding the date of the occurrence of the Third Closing Milestone.

"Transaction Documents" means the Warrant, the License and Development Agreement, the Supply Agreement and the Registration Rights Agreement.

"Waived Amount" has the meaning given in Section 2.5.

"Warrant" has the meaning defined in the recitals hereto.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrant.

1.2 Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural, and vice–versa.

(c) References to an "Exhibit" or to a "Schedule" are, unless otherwise specified, to one of the Exhibits or Schedules attached to or referenced in this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

(d) The term "person" includes any individual, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof.

ARTICLE 2
PURCHASE OF COMMON STOCK AND WARRANT

2.1 Purchase at First Closing.

(a) Purchased Shares. At the First Closing, AVI shall sell, issue and deliver to Investor, and Investor shall purchase from AVI, such number of shares of Common Stock (rounded to the nearest whole share) which shall equal ten million dollars ($10,000,000) divided by the Initial Market Price. Certificates representing such shares shall be issued at the First Closing in form acceptable to Investor and its counsel. The purchase price for the shares purchased pursuant to this Section shall be payable by wire transfer of funds to AVI's account as designated to Investor in writing prior to or on the First Closing Date.

(b) Warrant. At the First Closing, AVI shall issue and deliver to Investor the Warrant to purchase three million (3,000,000) shares of Common Stock at an initial exercise price equal to $10.00.

2.2 Purchase at Second Closing. Investor shall give written notice to AVI of the occurrence of the Second Closing Milestone within ten (10) business days thereafter. Such notice shall specify the date of the occurrence thereof. Subject to the terms and conditions hereof, including Section 2.5, and subject to the First Closing having occurred, within thirty (30) days after such written notice Investor shall invest Two Million Five Hundred Thousand Dollars ($2,500,000) in AVI in exchange for, and AVI shall sell, issue and deliver to Investor, such number of shares of Common Stock (rounded to the nearest whole share) which shall equal $2,500,000 divided by the Initial Market Price. Certificates representing any shares purchased under this Section shall be issued at the Second Closing in form acceptable to Investor and its counsel. The purchase price for the shares purchased pursuant to this Section shall be payable by wire transfer of funds to AVI's account as designated to Investor in writing prior to the Second Closing Date. In addition to Investor's rights under Section 2.5(a), Investor may, at Investor's option and by written notice to AVI, elect to pay in cash some or all of the amounts payable under this Section 2.2 as an additional capital contribution for Investor's Purchased Shares previously purchased in lieu of requiring AVI to issue Purchased Shares under this Section 2.2.

2.3 Purchase at Third Closing. Investor shall give written notice to AVI of the occurrence of the Third Closing Milestone within ten (10) business days thereafter. Such notice shall specify the date of the occurrence thereof. Subject to the terms and conditions hereof, including Section 2.5, and subject to the First Closing and Second Closing having occurred, within thirty (30) days after such written notice Investor shall invest Two Million Five Hundred Thousand Dollars ($2,500,000) in AVI in exchange for, and AVI shall sell, issue and deliver to Investor, such number of shares of Common Stock (rounded to the nearest whole share) which shall equal $2,500,000 divided by the Third Closing Market Price. Certificates representing any shares purchased under this Section shall be issued at the Third Closing in form acceptable to Investor and its counsel. The purchase price for the shares purchased pursuant to this Section shall be payable by wire transfer of funds to AVI's account as designated to Investor in writing prior to the Third Closing Date. In addition to Investor's rights under Section 2.5(a), Investor may, at Investor's option and by written notice to AVI, elect to pay in cash some or all of the amounts payable under this Section 2.3 as an additional capital contribution for Investor's Purchased Shares previously purchased in lieu of requiring AVI to issue Purchased Shares under this Section 2.3.

2.4 Purchase at Fourth Closing. Investor shall give written notice to AVI of the occurrence of the Fourth Closing Milestone within ten (10) business days thereafter. Such notice shall specify the date of the occurrence thereof. Subject to the terms and conditions hereof, including Section 2.5, and subject to the First Closing, Second Closing and Third Closing having occurred, within thirty (30) days after such written notice Investor shall invest Five Million Dollars ($5,000,000) in AVI in exchange for, and AVI shall sell, issue and deliver to Investor, such number of shares of Common Stock (rounded to the nearest whole share) which shall equal $5,000,000 divided by the Fourth Closing Market Price. Certificates representing any shares purchased under this Section shall be issued at the Fourth Closing in form acceptable to Investor and its counsel. The purchase price for the shares purchased pursuant to this Section shall be payable by wire transfer of funds to AVI's account as designated to Investor in writing prior to the Fourth Closing Date. In addition to Investor's rights under Section 2.5(a), Investor may, at Investor's option and by written notice to AVI, elect to pay in cash some or all of the amounts payable under this Section 2.4 as an additional capital contribution for Investor's Purchased Shares previously purchased in lieu of requiring AVI to issue Purchased Shares under this Section 2.4.

2.5 Certain Limitations.

(a) Notwithstanding Sections 2.2, 2.3 and 2.4 above, if the number of shares of Common Stock to be purchased by Investor pursuant to Sections 2.2, 2.3. and 2.4, when added to the number of shares of Common Stock previously purchased by Investor or issued to Investor upon previous exercise of the Warrant, would exceed nineteen and nine-tenths percent (19.9%) of the total number of issued and outstanding voting shares of AVI, then Investor may elect in writing to do one of the following:

(i) in lieu of purchasing Purchased Shares at such Second Closing, Third Closing or Fourth Closing, respectively, Investor shall pay the full amount required under Section 2.2, 2.3 or 2.4, as the case may be, but Investor may, at Investor's option, specify a dollar amount of such payment with respect to which Investor is suspending or waiving in writing the requirement that shares of Common Stock under such Section be issued in consideration for such payment (the "Waived Amount"), provided, however, that

(A) Investor, at Investor's option and upon prior written notice to AVI, may credit the Waived Amount against and reduce the exercise price otherwise payable under the Warrant upon exercise thereof; or

(B) Investor, at Investor's option on written notice to AVI, may revoke such suspension or waiver, and within thirty (30) days thereafter, AVI shall issue such number of shares of Common Stock as is equal to the Waived Amount divided by the per share price payable under Section 2.2, 2.3 or 2.4, as the case may be; or

(ii) purchase the number of shares of Common Stock described in Section 2.2, 2.3 or 2.4, respectively, subject to Investor transferring effective voting control (by irrevocable proxy or other method designated by Investor and reasonably acceptable to AVI) of such shares of Common Stock in excess of 19.9% of the total number of issued and outstanding voting shares of AVI to AVI's Chief Executive Officer for so long as such shares, when added to all other shares of Common Stock of AVI owned by Investor would exceed 19.9% of the total number of issued and outstanding voting shares of AVI.

(b) AVI will not, without Investor's consent, redeem, repurchase or otherwise effect a recapitalization which would result in Investor and its Affiliates owning more than nineteen and nine-tenths percent (19.9%) of the total number of issued and outstanding voting shares of AVI.

(c) Notwithstanding Sections 2.3 and 2.4 above, with respect to the Purchased Shares otherwise to be purchased and sold at the Third Closing and at the Fourth Closing, if the Average Price with respect to the Applicable Shares (determined without reference to the Applicable Limit) is less than the Initial Market Price, then Investor shall not be obligated to purchase, and AVI shall not be obligated to sell, the Excess Shares unless and until Shareholder Approval is obtained with respect to the issuance and sale of the Excess Shares. If the Average Price for the Applicable Shares would equal or exceed the Initial Market Price (determined without reference to the Applicable Limit), then the provisions of this Section 2.5(c) shall not apply. If Shareholder Approval is required under this Section 2.5(c), AVI shall use its best efforts to obtain Shareholder Approval on or before the next annual AVI shareholder meeting occurring after the date of the Third Closing Milestone or Fourth Closing Milestone, as the case may be. If despite such best efforts, Shareholder Approval is not so obtained within fifteen months after the Third Closing Milestone or Fourth Closing Milestone, as the case may be, at all times thereafter Investor shall not be obligated to purchase, and AVI shall not be obligated to sell, the Excess Shares.

(i) "Excess Shares" means such number of Purchased Shares otherwise issuable at the Third Closing or Fourth Closing, as the case may be, that would cause the Applicable Shares to exceed the Applicable Limit.

(ii) "Applicable Shares" means the number of Purchased Shares issued to Investor at all previous Closing under this Agreement plus such additional number of Purchased Shares otherwise issuable at the Third Closing or the Fourth Closing, as the case may be, when added to the number issued at previous Closings, as would equal the Applicable Limit. For avoidance of doubt, Applicable Shares does not include the Warrant or the Warrant Shares issued or issuable upon exercise thereof.

(iii) "Applicable Limit" means 19.9999% times 21,575,267 shares (or if lesser, the actual number of shares of capital stock outstanding as of the date of this Agreement).

(iv) "Average Price" means weighted average purchase price paid by Investor under this Agreement for the Applicable Shares issued at the previous Closings and to be paid by Investor for the Applicable Shares at the Third Closing or Fourth Closing, as the case may be.

(v) "Shareholder Approval" means the vote required for purposes of approving share issuances of the type contemplated hereby under the regulations of the National Association of Securities Dealers ("NASD").

(vi) References in this Section 2.5(c) to specific dollar amounts or specific number of shares shall be equitably adjusted for any stock splits or the like occurring after the date hereof.

(d) Promptly after execution of this Agreement (which may be before or after the First Closing), AVI shall request in writing from NASD confirmation that no Shareholder Approval is required in connection with the issuance and sale of Purchased Shares at the Second Closing, Third Closing and Fourth Closing other than that the Shareholder Approval, if any, required under Section 2.5(c) above. For purposes hereof, any Shareholder Approval required for issuance of any Purchased Shares at the Second Closing, Third Closing and Fourth Closing other than as set forth in Section 2.5(c) is referred to herein as the "Other Shareholder Approval." If it is determined, after consultation with NASD, that Other Shareholder Approval is required in connection with the purchase and sale of Purchased Shares otherwise issuable at the Second Closing, Third Closing or Fourth Closing, as the case may be, it shall be a condition to both Investor's obligation to purchase, and AVI's obligation to sell, such Purchase Shares at the Second Closing, Third Closing and Fourth Closing, as the case may be, that such Other Shareholder Approval be obtained (to the extent so required). If such Other Shareholder Approval is so required, AVI shall use its best efforts to obtain such Other Shareholder Approval on or before the next annual AVI shareholder meeting occurring after the date of the Second Closing Milestone, Third Closing Milestone or Fourth Closing Milestone, as the case may be. If despite such best efforts, such Other Shareholder Approval is not so obtained within fifteen months after the Second Closing Milestone, Third Closing Milestone or Fourth Closing Milestone, as the case may be, at all times thereafter Investor shall not be obligated to purchase, and AVI shall not be obligated to sell, any Purchased Shares for which such Other Shareholder Approval is required but not so obtained.

(e) The parties acknowledge and agree that if Investor and AVI are not obligated to purchase or sell Purchased Shares at a Closing as a result of any Shareholder Approval or Other Shareholder Approval requirements under Section 2.5(c) or 2.5(d), (i) Investor shall not be obligated to make any payments under this Agreement or otherwise in lieu thereof, and (ii) the rights and obligations of the parties and their Affiliates under the other terms and conditions of this Agreement and the terms and conditions of the Transaction Documents shall not be impaired or affected as a result thereof, and such Agreement and Transaction Documents shall continue in accordance with their terms and conditions.

2.6 Waiver of Milestones. Investor, at its option, upon written notice to AVI may waive the requirement that one or more of the Milestones referenced in Sections 2.2, 2.3 or 2.4 has occurred, in which case, Investor shall purchase, and AVI shall sell, the Purchased Shares pursuant to Section 2.2, 2.3 or 2.4, as the case may be, as though such waived Milestone had occurred. If such a waiver is made with respect to Section 2.3 or 2.4, the Third Closing Market Price and the Fourth Closing Market Price shall be determined with respect the date written notice of such waiver is given rather than the date of the occurrence of the Third Closing Milestone or Fourth Closing Milestone, as the case may be. Further, with respect to each Closing, Investor, at its option, upon written notice to AVI may waive the requirement that prior Closings shall have occurred, as referenced in Sections 2.2, 2.3 and 2.4.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF AVI

AVI hereby makes the representations and warranties in this Article 3 to Investor as of the date of this Agreement and as of each Closing Date, as qualified by the disclosure schedule attached hereto, and as updated pursuant to Section 6.1(m) (the "Disclosure Schedule"). The Disclosure Schedule is accurate and complete as of the date hereof. The Disclosure Schedule is arranged in sections corresponding to the sections and subsections of this Article 3.

3.1 Organization, Qualifications and Corporate Power.

(a) AVI and each AVI Subsidiary is a corporation duly incorporated, validly existing and, to the extent applicable under the laws of such jurisdiction, is in good standing under the laws of its respective jurisdiction of incorporation and, to the extent applicable, is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification and where the failure to be so licensed or qualified would have a Material Adverse Effect upon AVI, such AVI Subsidiary or its respective business. AVI and each AVI Subsidiary has, pursuant to the applicable laws, the corporate power and authority to own and hold its properties and to carry on its business as now conducted and as proposed to be conducted. AVI has the corporate power and authority to execute, deliver and perform this Agreement and the Transaction Documents, and to issue, sell and deliver the Purchased Securities.

(b) AVI does not (i) own of record or beneficially, directly or indirectly, (A) any shares of capital stock or securities convertible into capital stock of any other corporation, or (B) any participating interest in any partnership, joint venture or other non-corporate business enterprise, or (ii) control, directly or indirectly, any other entity.

3.2 Authorization of Agreements, Etc.

(a) The execution and delivery by AVI of this Agreement and the Transaction Documents, the performance by AVI of its obligations hereunder and thereunder, and the issuance, sale and delivery of the Purchased Securities have been duly authorized by all requisite corporate action of AVI, its shareholders and directors, and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or the Bylaws of AVI, as amended, or any provision of any indenture, agreement or other instrument to which AVI or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any Lien upon any of the properties or assets of AVI.

(b) The Purchased Securities have been duly authorized by all requisite action of AVI, its shareholders and its directors, and the Purchased Shares and Warrant Shares when issued in accordance with this Agreement, will be validly issued, fully paid and nonassessable shares of Common Stock with no personal liability attaching to the ownership thereof and will be free and clear of all Liens. The issuance, sale or delivery of the Purchased Securities is not subject to any preemptive right of stockholders of AVI or to any right of first refusal or other right in favor of any person that has not been complied with or duly waived.

3.3 Validity. Each of this Agreement and the Transaction Documents has been duly executed and delivered by AVI and constitutes the legal, valid and binding obligation of AVI enforceable in accordance with its terms except as may be limited by laws affecting creditors' rights generally or by judicial limitations on the right to specific performance.

3.4 Authorized Capital Stock. The authorized capital stock of AVI consists of (a) 50,000,000 shares of Common Stock, par value $0.0001, of which _21,575,267shares are issued and outstanding, and (b) 2,000,000 shares of preferred stock, par value $0.0001, none of which are issued and outstanding. There are issued and outstanding options to purchase an aggregate 2,866,335 shares of Common Stock, warrants to purchase an aggregate 7,352,003 shares of Common Stock, and no other outstanding subscriptions, warrants, options, convertible securities, or other rights (contingent or other) to purchase or otherwise acquire Common Stock or other equity securities of AVI. There are no agreements or arrangements under which AVI is obligated to register the sale of any of its securities under the Securities Act. Except for an existing warrant held by SuperGen, Inc. to acquire ten percent of the outstanding securities (as defined therein at the time of exercise), there are no anti-dilution or price adjustment provisions contained in any security issued by AVI (or in any agreement providing rights to security holders) that will be triggered by the issuance of the Purchased Securities. The designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of each class of authorized equity securities of AVI are as set forth in AVI's Articles of Incorporation, a true and correct copy of which has been provided to Investor, and all such designations, powers, preferences, rights, qualifications, limitations and restrictions are valid, binding and enforceable and in accordance with all applicable laws. Except as provided for in AVI's Articles of Incorporation, AVI has no obligation (contingent or other) to purchase, redeem or otherwise acquire any of the equity securities or any interest therein or rights to acquire such securities or to pay any dividend or make any other distribution in respect thereof. To AVI's knowledge, there are no voting trusts or agreements, stockholders' agreements, pledge agreements, buy-sell agreements, rights of first refusal, preemptive rights or proxies relating to any securities of AVI (whether or not AVI is a party thereto). All of the outstanding securities of AVI were issued in compliance with all applicable federal and state securities laws.

3.5 SEC Documents; Financial Statements. AVI has filed in a timely manner all documents that AVI was required to file with the SEC during the twelve (12) months preceding the date of this Agreement. As of their respective filing dates, all SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as applicable. None of the SEC Documents contained, as of their respective dates, any untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, and such SEC Documents, when read as a whole, do not contain any untrue statements of a material fact and do not omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Financial Statements comply in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto. The Financial Statements have been prepared in accordance with United States generally accepted accounting principles consistently applied, and fairly present AVI's consolidated financial position as of the dates thereof and the results of AVI's consolidated operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end adjustments). Except as set forth in the Financial Statements, neither AVI nor any AVI Subsidiaries has any liabilities, contingent or otherwise, other than liabilities incurred in the ordinary course of business subsequent to December 31, 2000, and liabilities of the type not required under United States generally accepted accounting principles to be reflected in such Financial Statements. Such liabilities incurred subsequent to December 31, 2000, are not, in the aggregate, material to the financial condition or operating results of AVI.

3.6 Litigation; Compliance with Law. There is no: (a) action, suit, claim, proceeding or investigation pending or, to AVI's knowledge, threatened against or affecting AVI or any AVI Subsidiary, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (b) arbitration proceeding relating to AVI or any AVI Subsidiary pending under collective bargaining agreements or otherwise or (c) governmental inquiry pending or, to AVI's knowledge, threatened against or affecting AVI or any AVI Subsidiary (including without limitation any inquiry as to the qualification of AVI or any AVI Subsidiary to hold or receive any license or permit), and there is no basis for any of the foregoing. AVI has not received any opinion or memorandum or legal advice from legal counsel to the effect that AVI or any AVI Subsidiary is exposed, from a legal standpoint, to any liability or disadvantage which may have a Material Adverse Effect. Neither AVI nor any AVI Subsidiary is in default with respect to any order, writ, injunction or decree of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action, claim, proceeding, investigation or suit by AVI or any AVI Subsidiary pending or threatened against others. AVI and each AVI Subsidiary have complied with all laws, rules, regulations and orders applicable to its business, operations, properties, assets, products and services. AVI and each AVI Subsidiary has or will obtain prior to becoming necessary all necessary permits, licenses and other authorizations required to conduct its business as conducted and as proposed to be conducted which, if not obtained, would have, either individually or in the aggregate, a Material Adverse Effect. There is no existing law, rule, regulation or order, and AVI is not aware of any proposed law, rule, regulation or order, whether federal or state, which would prohibit or restrict AVI or any AVI Subsidiary from, or otherwise materially adversely affect AVI or any AVI Subsidiary in, conducting its business in any jurisdiction in which it is now conducting business or in which it proposes to conduct business.

3.7 Proprietary Information of Third Parties. No third party has claimed or has reason to claim that any person employed by or affiliated with AVI or any AVI Subsidiary has (a) violated or may be violating any of the terms or conditions of his employment, non-competition or nondisclosure agreement with such third party, (b) disclosed or may be disclosing or utilized or may be utilizing any trade secret or proprietary information or documentation of such third party, or (c) interfered or may be interfering in the employment relationship between such third party and any of its present or former employees. To AVI's knowledge, no third party has requested information from or otherwise communicated with AVI or any AVI Subsidiary which suggests that such a claim might be contemplated. To AVI's knowledge, no person employed by or affiliated with AVI or any AVI Subsidiary has employed or proposes to employ any trade secret or any information or documentation proprietary to any former employer, and to AVI's knowledge, no person employed by or affiliated with AVI or any AVI Subsidiary has violated any confidential relationship which such person may have had with any third party, in connection with the development, manufacture or sale of any product or proposed product or the development or sale of any service or proposed service of AVI or any AVI Subsidiary, and AVI has no reason to believe there will be any such employment or violation.

3.8 Title to Properties. AVI or the AVI Subsidiaries have good and marketable title to its properties and assets reflected in the most recent Financial Statements (other than properties and assets disposed of in the ordinary course of business since the date thereof), and all such properties and assets are free and clear of all Liens, except for liens for or current taxes not yet due and payable and minor imperfections of title, if any, not material in nature or amount and not materially detracting from the value or impairing the use of the property or asset subject thereto or impairing the business or proposed business of AVI.

3.9 Leasehold Interests. Each lease or agreement to which AVI or any AVI Subsidiary is a party under which it is a lessee of any property, real or personal, is a valid and existing agreement without any default of AVI or any AVI Subsidiary thereunder and, to AVI's knowledge, without any default thereunder of any other party thereto. No event has occurred and is continuing which, with due notice or lapse of time or both, would constitute a default or event of default by AVI or any AVI Subsidiary under any such lease or agreement or, to AVI's knowledge, by any other party thereto. The possession of such property by AVI or such AVI Subsidiary has not been disturbed and, to AVI's knowledge, no claim has been asserted or threatened against AVI or such AVI Subsidiary adverse to its rights in such property.

3.10 Taxes. AVI and each AVI Subsidiary has timely filed, or caused to be timely filed, all federal, state and local tax returns for income taxes, franchise taxes, sales taxes, withholding taxes, property taxes and, to AVI's knowledge, all other taxes of every kind whatsoever required by law to be filed, and all such tax returns are complete and accurate and in accordance with all requirements applicable thereto. The tax returns of AVI or any AVI Subsidiary have

never been audited by appropriate governmental authorities and AVI does not know of any additional tax liabilities for any periods for which such returns have been filed.

3.11 Patents, Trademarks, Etc. AVI and each AVI Subsidiary owns or possesses licenses or other rights to use all Intellectual Property necessary to or used in the conduct of its business as conducted and as proposed to be conducted, and no claim is pending or, to AVI's knowledge, threatened to the effect that the operations of AVI or any AVI Subsidiary infringe upon or conflict with the asserted rights of any other person under any Intellectual Property, and to AVI's knowledge there is no basis for any such claim (whether or not pending or threatened). Except as set forth in the SEC Documents, no claim is pending or threatened to the effect that any such Intellectual Property owned or licensed by AVI or any AVI Subsidiary, or which AVI or any AVI Subsidiary otherwise has the right to use, is invalid or unenforceable by AVI or such AVI Subsidiary, and to AVI's knowledge there is no basis for any such claim (whether or not pending or threatened). To AVI's knowledge, all technical information developed by and belonging to AVI or any AVI Subsidiary which has not been patented has been kept confidential. Neither AVI nor any AVI Subsidiary has granted or assigned to any other person or entity any right to develop, manufacture, have manufactured, assemble or sell the products or proposed products or to provide the services or proposed services of AVI or such AVI Subsidiary. AVI has secured valid written assignments from all consultants and employees who contributed to the creation or development of Intellectual Property or the rights to such contributions that AVI does not already own by operation of law. AVI has taken all necessary and appropriate steps to protect and preserve the confidentiality of all Intellectual Property not otherwise protected by patents, patent applications or copyright. AVI has a policy requiring each of its employees and contractors to execute proprietary information and confidentiality agreements substantially in AVI's standard forms and all current and former employees and contractors of AVI and each AVI Subsidiary have executed such an agreement. AVI has provided a true and correct copy of such form to Investor.

3.12 Loans and Advances. Except as disclosed in the SEC Documents or Disclosure Schedule, AVI and the AVI Subsidiaries do not have any outstanding loans or advances to any person and are not obligated to make any such loans or advances, except, in each case, for advances to employees of AVI or such AVI Subsidiary in respect of reimbursable business expenses anticipated to be incurred by them in connection with their performance of services for AVI or such AVI Subsidiary.

3.13 Assumptions, Guaranties, Etc. of Indebtedness of Other Persons. Except as disclosed in the Financial Statements, neither AVI nor any AVI Subsidiary has assumed, guaranteed, endorsed or otherwise become directly or contingently liable on any indebtedness of any other person (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor, or otherwise to assure the creditor against loss), except for guaranties by endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

3.14 Governmental Approvals. Subject to the accuracy of the representations and warranties of Investor set forth in Article 4, no registration or filing with, or consent or approval of or other action by, any federal, state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance by AVI of this Agreement, the Transaction Documents, or for the issuance, sale and delivery of the Purchased Securities, other than filings pursuant to state securities laws (all of which filings have been made or will be timely made by AVI) in connection with the sale of the Purchased Securities.

3.15 Brokers. AVI has no contract, arrangement or understanding with any broker, finder or similar agent with respect to the transactions contemplated by this Agreement.

3.16 Transactions With Affiliates. Except as disclosed in the SEC Documents, no director, officer, employee or stockholder of AVI or any AVI Subsidiary, or member of the family of any such person, or any corporation, partnership, trust or other entity in which any such person, or any member of the family of any such person, has a substantial interest or is an officer, director, trustee, partner or holder of more than 5% of the outstanding capital stock thereof, is a party to any transaction with AVI or any AVI Subsidiary, including any contract, agreement or other arrangement providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payments to any such person or firm.

3.17 Environmental Matters. AVI and each AVI Subsidiary has obtained, and is in full compliance with, all permits, licenses or other approvals necessary under the Environmental Laws or Regulations with respect to its business or assets, and is in compliance with all Environmental Laws or Regulations. Neither AVI nor any AVI Subsidiary has taken any action or failed to take any action with respect to its business, assets or the real property presently or formerly used in connection therewith that might result in, nor has AVI, any AVI Subsidiary or their businesses or assets ever been subject to any investigations, administrative proceedings, litigation, regulatory hearings, or other action threatened, proposed or pending that alleged or alleges: (i) actual or threatened violation of or noncompliance with any Environmental Law or Regulation; or (ii) actual or threatened personal injury or property damage or contamination of any kind resulting from a release or threatened release of a Hazardous Substance.

3.18 Employees. To AVI's knowledge, no employee of AVI or any AVI Subsidiary is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement with any third party, the terms of which would restrict the right of any such employee to be employed by AVI or any AVI Subsidiary because of the nature of the business conducted or to be conducted by AVI or any AVI Subsidiary or for any other reason or would conflict with such employee's obligation to use his best efforts to promote the interests of AVI, and the continued employment by AVI and the AVI Subsidiaries of their present employees will not result in any such violations. There are no strikes or other labor disputes against AVI or any AVI Subsidiary pending or, to the knowledge of AVI, threatened which could have a Material Adverse Effect. Neither AVI nor any AVI Subsidiary is a party to or bound by any collective bargaining agreement or other labor agreement with any bargaining agent (exclusive or otherwise) of any of its employees.

3.19 Insurance. AVI and each AVI Subsidiary maintains (a) insurance on all material assets of a type customarily insured, covering property damage by fire or other casualty; and (b) adequate insurance protection against all liabilities, claims, and risks against which it is customary to insure.

3.20 Absence of Certain Changes. Since December 31, 2000, no event has occurred which could have a Material Adverse Effect.

3.21 Investment Company Status. AVI is not and upon consummation of the sale of the Purchased Securities will not be an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

3.22 Regulatory Filings. All documentation, correspondence, reports, data, analysis and certifications relating to or regarding any drugs of AVI, filed or delivered by or on behalf of AVI with any governmental authority, agency or body was true and accurate when so filed or delivered and, to the knowledge of AVI, remains true and accurate except where any changes would not have a Material Adverse Effect. AVI is not aware of any rule making or similar proceedings before the FDA or comparable federal, state, local or foreign government bodies which involve or affect AVI or any AVI Subsidiary which could have a Material Adverse Effect. The descriptions of the results of tests or evaluations contained in SEC Documents or delivered to the Investor are accurate and complete in all material respects, and AVI has no knowledge of any other tests or evaluations, the results of which reasonably call into question descriptions of the results of tests or evaluations referred to in SEC Documents or delivered to the Investor. Neither AVI nor any AVI Subsidiary has received any notices or correspondence from

the FDA or any other governmental agency requiring the termination, suspension or modification of any tests or evaluations conducted by or on behalf of AVI or any AVI Subsidiary that are described in SEC Documents or as delivered to the Investor.

3.23 State Takeover Laws. The Board of the Company has approved the transactions contemplated by this Agreement and the Transaction Documents such that the provisions of Section 60.835 of the Oregon Business Corporations Act will not apply to this Agreement, the Transaction Documents or any of the transactions contemplated hereby or thereby.

3.24 Nasdaq; Etc. AVI is in compliance with all applicable Nasdaq continued listing requirements for the Nasdaq Stock Market and is listed in good standing on the Nasdaq Stock Market. There are no proceedings pending or, to AVI's knowledge, threatened against AVI relating to the continued listing of AVI's Common Stock on the Nasdaq National Market and AVI has not received any notice of, nor to the knowledge of AVI is there any basis for, the delisting of the Common Stock from the Nasdaq National Market. AVI has not engaged in the past three (3) months in any discussion with any representative of any corporation or corporations regarding a proposed Change of Control of the Company.

3.25 Disclosure. Neither this Agreement, nor any Schedule or Exhibit to this Agreement, contains an untrue statement of a material fact or omits a material fact necessary to make the statements contained herein or therein not misleading. None of the statements, documents, certificates or other items prepared or supplied by AVI with respect to the transactions contemplated hereby, including, without limitation, reports, data, analyses and correspondence relating to the Drug, contains an untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading. There is no fact which AVI has not disclosed to Investor and its counsel in writing and of which AVI is aware which could have a Material Adverse Effect.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF INVESTOR

Investor makes the following representations and warranties to AVI:

4.1 Purchase of Purchased Securities. Investor is an "accredited investor" within the meaning of Rule 501 under the Securities Act and was not organized for the specific purpose of acquiring the Purchased Securities. Investor has sufficient knowledge and experience in investing in companies similar to AVI in terms of AVI's stage of development so as to be able to evaluate the risks and merits of Investor's investment in AVI and Investor is able financially to bear the risks thereof. Investor has had an opportunity to discuss AVI's business, management and financial affairs with AVI's management. The Purchased Securities are being acquired for Investor's own account for the purpose of investment and not with a present view toward their public sale or distribution; provided, however, that by making the representation herein, Investor does not agree to hold any of the Purchased Securities for any minimum or other specific term, except as set forth in Article 2 of this Agreement or pursuant to the terms of the Registration Rights Agreement, and reserves the right to dispose of the Purchased Securities at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. Investor understands that (i) the Purchased Securities have not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof or Rule 505 or 506 promulgated thereunder, (ii) the Purchased Securities must be held indefinitely unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration, (iii) the Purchased Securities will bear a legend to such effect and (iv) AVI will make a notation on its transfer books to such effect.

4.2 Corporate Authority. The execution, delivery and performance by Investor and Medtronic, as applicable, of this Agreement, the Transaction Documents, and the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all requisite corporate action on the part of Investor and Medtronic, and the execution and the delivery of this Agreement, the Transaction Documents, and consummation of the transactions contemplated hereby and thereby and compliance with and fulfillment of the terms and provisions hereof and thereof will not (i) conflict with or result in a breach of the terms, conditions or provisions of or constitute a default under the Articles of Incorporation or Bylaws of Investor or Medtronic, or (ii) require any affirmative approval, consent, authorization or other order or action of any court, governmental authority, regulatory body, creditor or any other person. Investor and Medtronic have all requisite power and authority to do and perform all acts and things required to be done by it under this Agreement, the Transaction Documents and the agreements contemplated hereby and thereby. Each of this Agreement and the Transaction Documents has been duly executed and delivered by Investor and Medtronic and constitutes the legal, valid and binding obligation of those entities enforceable in accordance with its terms except as may be limited by laws affecting creditors' rights generally or by judicial limitations on the right to specific performance.

ARTICLE 5
COVENANTS

5.1 Best Efforts. AVI will use its best efforts to satisfy in a timely fashion each of the conditions to be satisfied under Article 6 of this Agreement.

5.2 Reporting Status; Eligibility to Use Form S-3. AVI's Common Stock is registered under Section 12 of the Exchange Act. Throughout the Registration Period (as defined in the Registration Rights Agreement), AVI will timely file all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the reporting requirements of the Exchange Act, and AVI will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination. AVI currently meets, and will take all reasonably necessary action to continue to meet, the "registrant eligibility" requirements set forth in the general instructions to Form S-3 (or any successor registration form thereto) to enable the registration of the Registrable Shares (as defined in the Registration Rights Agreement).

5.3 Listing of Additional Shares. AVI will file with the NASDAQ National Market a Notification Form for Listing of Additional Shares for an amount of shares of Common Stock equal to at least the amount of the Purchased Shares as required by the NASDAQ National Market regulatory requirements. AVI will also comply with all applicable Nasdaq continued listing requirements for the Nasdaq Stock Market and shall remain in good standing on the Nasdaq Stock Market.

5.4 No Integration. AVI will not make any offers or sales of any security (other than the Purchased Securities) under circumstances that would cause the offering of the Purchased Securities to be integrated with any other offering of securities by AVI (a) for the purpose of any stockholder approval provision applicable to AVI or its securities or (b) for purposes of any registration requirement under the Securities Act.

5.5 Regulatory Approvals.

(a) AVI and Investor shall each use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things as may be necessary or applicable under the HSR Act, and will file and, if appropriate, use commercially reasonable efforts to have declared effective or approved all documents and notifications with the U.S. Federal Trade Commission and Department of Justice and other governmental or regulatory bodies that they deem necessary or appropriate for, the issuance of the Purchased Securities or the Transaction Documents, and each party shall give the other information reasonably requested by such other party pertaining to it and its subsidiaries and affiliates to enable such other party to take

such actions. The parties agree to make any such required filing a reasonable period of time prior to the anticipated date of the occurrence of any closing hereunder or exercise of the Warrant that gives rise to such required filing. It shall be a condition to the occurrence of any closing hereunder and to exercise of the Warrant that any such actions or approvals required under the HSR Act be declared effective or approved, or that any waiting periods (or extensions thereof) under the HSR Act expire or terminate. Notwithstanding the foregoing or anything herein to the contrary, Medtronic and its Affiliates shall not be required to make arrangements for or to effect the cessation, sale, or other disposition of particular assets or categories of assets or businesses of Medtronic, AVI, or any of their Affiliates.

(b) Although the parties do not anticipate any legislative, administrative or judicial objection to the consummation of the transactions contemplated by this Agreement, AVI and Investor agree to each use commercially reasonable efforts to contest and resist any action, including legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) (an "Order") that is in effect and that restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement, including, without limitation, by vigorously pursuing available avenues of administrative and judicial appeal. Notwithstanding the foregoing provisions of this Section or anything in this Agreement to the contrary, nothing shall require Investor to make or agree to make, any divestiture of any portion of any business or assets of Investor or its Affiliates in order to obtain any waiver, consent or approval, and neither Investor nor its Affiliate shall be required to take or commit to take any action that limits its freedom of action or rights with respect to AVI or the Purchased Securities.

5.6 Exclusivity. AVI agrees that for a period commencing upon execution of this Agreement until the earlier of the First Closing or termination of this Agreement in accordance with Article 9, AVI will not directly or indirectly encourage or solicit the submission of, or entertain inquiries, proposals or offers from any person or entity (other than Medtronic or its Affiliates), or otherwise provide information to or engage in discussions with any other person or entity, in any way relating to the sale, licensing, distribution or other disposition of the Drug.

5.7 Reserve for Shares; Authorized Shares. AVI shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock such number of its duly authorized shares of Common Stock to comply with the terms of this Agreement and the Warrant. If at any time the number of shares of authorized but unissued Common Stock shall not be sufficient to comply with the terms of this Agreement and the Warrant, AVI will promptly take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares of Common Stock as shall be sufficient for such purpose. AVI will obtain any authorization, consent, approval or other action by or make any filing with any court or administrative body that may be required under applicable securities laws in connection with the issuance of any shares issued by it in order to comply with the terms of this Agreement and the Warrant.

5.8 Corporate Existence. So long as Investor beneficially owns any of the Purchased Securities, AVI shall maintain its corporate existence, except in the event of a merger, consolidation or sale of all or substantially all of AVI's assets, as long as the surviving or successor entity in such transaction (a) assumes AVI's obligations hereunder and under the other Transaction Documents; (b) has no legal, contractual or other restrictions on its ability to perform the obligations of AVI hereunder and under the Transaction Documents; and (c) is a publicly traded corporation whose common stock and the shares of capital stock issuable upon exercise of the Warrants are (or would be upon issuance thereof) listed for trading on the Nasdaq Stock Market, New York Stock Exchange or American Stock Exchange.

ARTICLE 6
CONDITIONS TO CLOSING

6.1 Conditions to Investor's Obligations. The obligations of Investor to purchase and pay for the Purchased Shares and to accept the Warrant pursuant to Section 2.1 at the First Closing, and, subject to further compliance with the provisions of subsections (m)and (n)below, to purchase and pay for the Purchased Shares being purchased by Investor pursuant to Section 2.2 at the Second Closing Date, pursuant to Section 2.3 at the Third Closing Date, and pursuant to Section 2.4 at the Fourth Closing Date, are subject to the satisfaction or waiver, on each such respective Closing Date, of the conditions set forth below:

(a) Representations and Warranties to be True and Correct. The representations and warranties contained in Article 3 shall be true, complete and correct on and as of such Closing Date with the same effect as though such representations and warranties had been made on and as of such date, and the President and Chief Financial Officer of AVI shall have certified to such effect to Investor in writing.

(b) Performance. AVI shall have performed and complied with all terms and conditions contained in this Agreement and the Transaction Documents which are required to be performed or complied with by AVI prior to or at such Closing Date, and the President and Chief Financial Officer of AVI shall have certified to Investor in writing to such effect and to the further effect that all of the conditions set forth in this Section 6.1 have been satisfied.

(c) Execution and Delivery of Transaction Documents. AVI shall have executed and delivered the Transaction Documents.

(d) All Proceedings to be Satisfactory. All corporate and other proceedings to be taken by AVI in connection with the transactions contemplated hereby and all documents incident thereto shall be satisfactory in form and substance to Investor and its counsel, and Investor and its counsel shall have received all such counterpart originals or certified or other copies of such documents as they reasonably may request.

(e) Supporting Documents. Investor and their counsel shall have received copies of the following documents:

(i) a certificate of the Secretary of State of the State of Oregon dated as of a date within five days prior to such Closing Date as to the corporate existence of AVI and listing all documents of AVI on file with said Secretary of State;

(ii) a certificate of the Secretary of AVI dated such Closing Date and certifying: (A) AVI's then current Articles of Incorporation and Bylaws; (B) that attached thereto is a true and complete copy of all resolutions adopted by the Board of Directors of AVI authorizing the execution, delivery and performance of this Agreement, the Transaction Documents, the issuance, sale and delivery of the Purchased Securities, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated by this Agreement and the Transaction Documents; and (C) to the incumbency and specimen signature of each officer of AVI executing this Agreement, the Transaction Documents, the stock certificates representing the Purchased Shares, the Warrant, and any certificate or instrument furnished pursuant hereto, and a certification by another officer of AVI as to the incumbency and signature of the officer signing the certificate referred to in this subsection (ii); and

(iii) such additional supporting documents and other information with respect to the operations and affairs of AVI as Investor or its counsel reasonably may request.

(f) Required Consents. AVI shall have obtained the written consent or approval of each person whose consent or approval Investor reasonably believes is required in connection with this Agreement and the Transaction Documents, including but not limited to expiration or termination of any waiting periods (and any extension thereof) under the HSR Act and all applicable consents and approvals, in form and content satisfactory to Investor, from the National Institute of Health with respect to the assignment of the PHS License (as defined in the License and Development Agreement) to AVI and the grant of a sublicense by AVI to Medtronic, Inc. with respect thereto.

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

(h) Legislation. No statute, rule, regulation, order, or interpretation shall have been proposed, enacted, entered or deemed applicable by any domestic or foreign government or governmental or administrative agency or court which would make the transactions contemplated by this Agreement or the Transaction Documents illegal.

(i) Opinion of Company's Counsel. Investor shall have received from Hurley, Lynch & Re, P.C., counsel for AVI, an opinion dated as of such Closing Date in form and scope satisfactory to Investor and their counsel, substantially as follows:

(i) AVI and each AVI Subsidiary is a corporation duly incorporated, validly existing and, to the extent applicable under the laws of such jurisdiction, is in good standing under the laws of its respective jurisdiction of incorporation and, to the extent applicable, is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification and where the failure to be so licensed or qualified would have Material Adverse Effect. AVI and each AVI Subsidiary has, pursuant to the applicable laws, the corporate power and authority to own and hold its properties and to carry on its business as now conducted and as proposed to be conducted. AVI has the corporate power and authority to execute, deliver and perform this Agreement and the Transaction Documents and to issue, sell and deliver the Purchased Securities.

(ii) The authorized and outstanding capital stock of AVI consists of that described in Section 3.4 of this Agreement. All such issued and outstanding shares, options and warrants were duly authorized and validly issued, fully paid and nonassessable and free and clear of any Liens, except as to restrictions on transfer imposed by AVI to comply with federal and applicable state securities laws. To such counsel's knowledge after investigation, and except as disclosed to Investor, after reasonable investigation, there are no other options, warrants, conversion privileges, preemptive rights, rights of first refusal or other rights (or agreements with respect to the issuance thereof) presently in existence to purchase or acquire any of the authorized but unissued capital stock of AVI.

(iii) All necessary corporate action on the part of AVI and of its officers, directors and shareholders has been taken for the valid execution and delivery of this Agreement, the Transaction Documents, and the performance of the obligations of AVI hereunder and thereunder. The Board of the Company has approved the transactions contemplated by this Agreement and the Transaction Documents such that the provisions of Section 60.835 of the Oregon Business Corporations Act will not apply to this Agreement, the Transaction Documents or any of the transactions contemplated hereby or thereby. This Agreement and the Transaction Documents have been validly executed and delivered and are legal, valid and binding obligations of AVI, enforceable against AVI in accordance with their respective terms. The execution and delivery of this Agreement and the Transaction Documents and the performance by AVI of its obligation hereunder and thereunder do not conflict with or result in the violation of AVI's Articles of Incorporation or Bylaws; or any material written agreement, instrument, order, writ, judgment or decree known to such counsel to which AVI is a party or by which it is bound; or to such counsel's knowledge, violate any existing law or regulation.

(iv) The Purchased Securities have been duly authorized by all necessary corporate action on the part of AVI and, upon delivery by AVI in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable and free and clear of any Liens, except that such Purchased Securities will be subject to restrictions on transfer imposed by AVI to comply with federal and applicable state securities laws as described in Article 4 hereof.

(v) To such counsel's knowledge after investigation, except as disclosed in the Disclosure Schedule, there are no actions, proceedings or investigations which are pending or threatened against or affecting AVI, that, either in any case or in the aggregate, might result in a Material Adverse Effect.

(vi) All consents, approvals, orders, authorizations or registrations, qualifications, designations, declarations or filings of or with any federal or state governmental authority on the part of AVI required in connection with the consummation of the transactions contemplated by this Agreement and the Transaction Documents have been made, obtained or effected (provided, however, that filings under applicable state securities laws may be made promptly after the Closing to the extent such filings are permitted to be made after the sale of the Purchased Securities). Based in part on the representations of Investor in Article 4 of this Agreement, the offer, sale and issuance by AVI of the Purchased Securities, all in conformity with the terms of this Agreement, do not require registration under Section 5 of the Securities Act of 1933, as amended.

In rendering such opinions, said counsel may rely on such certificates of public officials and, with respect to factual matters, of officers of AVI as such counsel deems necessary or appropriate, and such opinions may be limited in scope and be subject to such qualifications as is customary under the circumstances and as may be reasonably acceptable to counsel to Investor.

(j) No Change of Control. Since the date hereof, there shall not have been any Change of Control.

(k) No Material Adverse Changes. Since the date hereof, no event shall have occurred which may result in a Material Adverse Effect.

(l) No Default. Since the date hereof, no default (or event which, with the passage of time and/or the giving of notice, would constitute a default) of AVI shall have occurred under this Agreement or the Transaction Documents.

(m) Information to Be Provided to Investor at Second, Third, and Fourth Closings. Upon achieving each of the Second Closing Milestone, Third Closing Milestone, and Fourth Closing Milestones, and in any event not less than ten (10) business days prior to the applicable Closing, AVI shall provide to Investor an updated Disclosure Schedule that qualifies or supplements information contained in the representations and warranties of AVI set forth in Article 3 hereof and in the accompanying Disclosure Schedule, so as to reflect changes and developments in the business, operations, and condition

(financial or otherwise) of AVI subsequent to the date hereof. Upon receipt thereof, Investor's obligations shall be subject to Section 6.1(k) for any information disclosed therein.

(n) Deadlines. Investor's obligation at the Second Closing shall be subject to the condition that the Second Closing Milestone shall have occurred on or before * * *; Investor's obligation at the Third Closing shall be subject to the condition that the Third Closing Milestone shall have occurred on or before * * *; and Investor's obligation at the Fourth Closing shall be subject to the condition that the Fourth Closing Milestone shall have occurred on or before * * *.

6.2 Conditions to AVI's Obligations. The obligations of AVI to issue, sell and deliver certificates representing the Purchased Shares and the Warrant pursuant to Article 2 are subject to the satisfaction or waiver, on or before the respective Closing Date of the conditions set forth below:

(a) Execution of Transaction Documents. Investor or Medtronic, as the case may be, shall have executed and delivered the Transaction Documents.

(b) Representations and Warranties to be True and Correct. The representations and warranties contained in Article 4 shall be true, complete and correct on and as of such Closing Date with the same effect as though such representations and warranties had been made on and as of such date.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification of Medtronic. AVI shall indemnify, defend and hold harmless Investor, Medtronic and each of its Affiliates, and their respective officers, directors and stockholders (Investor, Medtronic and such other indemnities referred to in this Article 7 as "Medtronic") from and against and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, without limitation, reasonable legal fees and disbursements incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment or judgment) ("Indemnifiable Losses"), resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of any breach of any representation, warranty, covenant or agreement of AVI contained in this Agreement, the Transaction Documents, or any agreement, certificate or document executed and delivered by AVI pursuant hereto or in connection with any of the transactions contemplated by this Agreement.

7.2 Third-Party Claims. If a claim by a third party is made against Medtronic and if Medtronic intends to seek indemnity with respect thereto under this Article 7, Medtronic shall promptly notify AVI of such claim; provided, however, that failure to give timely notice shall not affect the rights of Medtronic so long as the failure to give timely notice does not materially and adversely affect AVI's ability to defend such claim against a third party. Medtronic shall not settle such claim without the consent of AVI, which consent shall not be unreasonably withheld or delayed. If AVI acknowledges in writing its indemnity obligations for Indemnifiable Losses resulting therefrom, AVI may participate at its own cost and expense in the settlement or defense of any claim for which indemnification is sought; provided that such settlement or defense shall be controlled by Medtronic.

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

7.4 Brokerage. AVI will indemnify and hold harmless Medtronic against and in respect of any claim for brokerage or other commissions relative to this Agreement or to the transactions contemplated hereby, based in any way on agreements, arrangements or understandings made or claimed to have been made by AVI with any third party.

7.5 Limitation on Certain Claims. To the extent Medtronic wishes to make a claim for indemnification under Section 7.1 with respect to Purchased Securities purchased at a Closing and the breach of the Company's representations and warranties deemed made as of the Closing Date applicable thereto, such claim for indemnification shall be made within * * * after such Closing Date applicable to such purchase. However, the foregoing * * * limitation shall not apply to any claim for indemnification arising out of any third party claim made against Medtronic, nor to the breach of any representation or warranty made in Sections 3.1, 3.2, 3.3, 3.4, 3.11 or 3.23.

ARTICLE 8
CLOSING

8.1 First Closing. The consummation of the purchase and sale of the Purchased Shares and the issuance of the Warrant pursuant to Section 2.1 (the "First Closing") shall, subject to the satisfaction of the conditions set forth in Article 6, occur not later than thirty (30) days after the date hereof, as specified in writing by Investor (the "First Closing Date"). At the First Closing, the parties shall also execute the Transaction Documents.

8.2 Second Closing. The consummation of the purchase and sale of the Purchased Shares pursuant to Section 2.2 (the "Second Closing") shall, subject to the satisfaction of the conditions set forth in Article 6, take place within thirty (30) days after the written notice referenced in such Section regarding the occurrence of the Second Closing Milestone, as specified in writing by Investor, or on such other date as the parties may agree (the "Second Closing Date").

8.3 Third Closing. The consummation of the purchase and sale of the Purchased Shares pursuant to Section 2.3 (the "Third Closing") shall, subject to the satisfaction of the conditions set forth in Article 6, take place within thirty (30) days after the written notice referenced in such Section regarding the occurrence of the Third Closing Milestone, as specified in writing by Investor, or on such other date as the parties may agree (the "Third Closing Date").

8.4 Fourth Closing. The consummation of the purchase and sale of the Purchased Shares pursuant to Section 2.4 (the "Fourth Closing") shall, subject to the satisfaction of the conditions set forth in Article 6, take place within thirty (30) days after the written notice referenced in such Section regarding the occurrence of the Fourth Closing Milestone, as specified in writing by Investor, or on such other date as the parties may agree (the "Fourth Closing Date").

8.5 Closings. Each of the Closings shall take place at the offices of Medtronic in Minneapolis, Minnesota, or by telecopy exchange of signature pages with originals to follow by overnight delivery, or in such other manner or at such place as the parties hereto may agree.

ARTICLE 9
TERMINATION AND DEFAULT

9.1 Termination. The obligation of the parties hereto to consummate the remaining transactions contemplated hereby may be terminated and abandoned at any time at or before the First Closing, Second Closing, Third Closing or Fourth Closing if any of the following events occurs:

(a) by and at the option of Investor or AVI, if the First Closing does not occur within sixty (60) days from the date hereof, provided that Investor or AVI, as the case may be, is not then in material default under this Agreement; or

(b) by and at the option of Investor, if the Second Closing Milestone, Third Closing Milestone or Fourth Closing Milestone does not occur by the dates set forth in Section 6.1(n); or

(c) by and at the option of Investor, if AVI is in default under this Agreement or the Transaction Documents, and does not cure such default within thirty (30) days after having received a notice from Medtronic or Investor regarding such default; or

(d) by and at the option of AVI, if Investor or Medtronic is in default under this Agreement or the Transaction Documents, and does not cure such default within thirty (30) days after having received a notice from AVI regarding such default; or

(e) by and at the option of Investor, any event or circumstance occurs or exists that renders any condition to Investor's obligations set forth in Article 6 incapable of being satisfied; or

(f) by and at the option of Investor if the conditions precedent in Section 6.1 hereof are not satisfied by AVI or waived by Investor within thirty (30) days after written notice has been given by Investor pursuant to Section 2.2, 2.3 or 2.4 hereof as the case may be; or

(g) by and at the option of AVI if the conditions precedent in Section 6.1 hereof are not satisfied by Investor or waived by AVI within thirty (30) days after written notice has been given by Investor pursuant to Section 2.2, 2.3 or 2.4 hereof as the case may be; or

(h) by and at the option of Investor if AVI exercises its option under Section 4.2 of the License and Development Agreement to convert the license granted thereunder from exclusive to non-exclusive; or

(i) by and at the option of Investor if a Material Adverse Effect with respect to AVI shall have occurred; or

(j) by the mutual written consent of the parties; or

(k) by and at the option of either Investor or AVI if any governmental authority shall have issued an order, decree, or ruling or taken any other action restraining, enjoining or otherwise prohibiting in any material respects the transactions contemplated hereby and such order, decree, ruling or other action shall have become final and nonappealable.

9.2 Effect. Termination of this Agreement by a party shall not relieve the other parties hereto of any liability for breach of representation, warranty, covenant or agreement by such other parties including liability for monetary damages and/or specific performance. Investor's or Medtronic's rights pursuant to the Transaction Documents shall survive any termination of this Agreement.

ARTICLE 10
OTHER PROVISIONS

10.1 Further Assurances. At such time and from time to time on and after the Closing Date, upon request by the other party, Investor and AVI will execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances that may be required for the better conveying, transferring, assigning, delivering, assuring and confirming to Investor, or to its respective successors and assigns, all of the Purchased Shares or to otherwise carry out the purposes of this Agreement.

10.2 Complete Agreement. This Agreement and the Transaction Documents (including all schedules and exhibits hereto and thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein, with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

10.3 Survival of Representations, Warranties and Agreements. The representations, warranties, covenants and agreements contained in Articles 3 and 4 of this Agreement shall survive each Closing and remain in full force and effect. No independent investigation of AVI by Investor, its counsel, or any of its agents or employees shall in any way limit or restrict the scope of the representations and warranties made by AVI in this Agreement.

10.4 Waiver, Discharge, Amendment, Etc. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not, absent an express written waiver signed by the party making such waiver specifying the provision being waived, be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of the party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. This Agreement may be amended by AVI and Investor, by mutual action approved by their respective Boards of Directors or their respective officers authorized by such Board of Directors, at any time. Any amendment to this Agreement shall be in writing and signed by AVI and Investor.

10.5 Notices. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by telecopy (receipt confirmed) to an executive officer of such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to Investor or Medtronic to:

Medtronic, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to AVI to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President, Alan P. Timmins

With a copy to:

HURLEY, LYNCH & RE, P.C.,
747 SW Industrial Way
Bend, Oregon 97702
Attn: Robert A. Stout, Esq.

Any party may change the above–specified recipient and/or mailing address by notice to the other party given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by telecopy) or on the day shown on the return receipt (if delivered by mail or delivery service).

10.6 Public Announcement. In the event any party proposes to issue any press release or public announcement concerning any provisions of this Agreement or the transactions contemplated hereby, such party shall so advise the other party hereto, and the parties shall thereafter use their best efforts to cause a mutually agreeable release or announcement to be issued. Neither party will publicly or privately disclose or divulge any provisions of this Agreement or the transactions contemplated hereby without the other parties' written consent, except as may be required by applicable law, rule, regulation, order or stock exchange regulation, and except for communications to employees; provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information.

10.7 Expenses. AVI and Investor shall each pay their own expenses incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

10.8 Governing Law. The formation, legality, validity, enforceability and interpretation of this Agreement shall be governed by the laws of the State of Minnesota, without giving effect to the principles of conflict of laws; provided, however, that nothing in Minnesota procedural law shall be deemed to alter or affect the applicability of the Federal Arbitration Act as governing arbitration of disputes as provided in Section 10.12 and, provided further, that no Minnesota laws or rules of arbitration shall be applicable. Subject to Section 10.12 hereof, if arbitration is sought by Investor, such arbitration shall be in Multnomah County, Oregon; and, if sought by AVI, such arbitration shall be in Hennepin County, Minnesota; and in each such case, the parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in such county with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby, and irrevocably consent to the exclusive jurisdiction and venue of such courts and waive any objections they may have at any time to such exclusive jurisdiction and venue.

10.9 Titles and Headings; Construction. The titles and headings to the Articles and Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

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

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed as original and all of which together shall constitute one instrument.

10.12 Arbitration. Any dispute arising out of or relating to this Agreement or the Registration Rights Agreement, including the formation, interpretation or alleged breach hereof, shall be settled in accordance with the **Exhibit E** attached hereto. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

10.13 Non-Disclosure. Each party agrees not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder or under the Transaction Documents) any Confidential Information of the other party obtained during the term of this Agreement until the expiration of three (3) years after the earlier of the First Closing or the termination of this Agreement. Each party further agrees to take appropriate measures to prevent any such prohibited disclosure by its present and future employees, officers, agents, subsidiaries, or consultants during such term

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

AVI BIOPHARMA, INC.

By: /s/ Denis Burger

Its: CEO

MEDTRONIC ASSET MANAGEMENT, INC.

By: /s/ Michael D. Ellwein

Its: VP

Exhibits and Schedules:

Exhibit A - Warrant
Exhibit B - License and Development Agreement
Exhibit C – Supply Agreement
Exhibit D – Registration Rights agreement
Exhibit E – Alternative Dispute Resolution
AVI Disclosure Schedule

EXHIBIT E

ALTERNATIVE DISPUTE RESOLUTION

1) Negotiations. If any dispute arises between AVI and Investor with respect to the Investment Agreement or the Registration Rights Agreement (the "Agreements"), or any alleged breach thereof, any party may, by written notice to the other party, have such dispute referred to their respective designees listed below or their successors for attempted resolution by good faith negotiations within 30 days after such notice is received. Such designees are as follows:

For AVI - the President of AVI or his/her designee

For Investor - the President of Medtronic, Inc.'s business unit to which the Agreements relate, or his/her designee

Any settlement reached by the parties under this Section 1 shall not be binding until reduced to writing and signed by the above-specified designees of Investor and AVI. When reduced to writing, such settlement agreement shall supersede all other agreements, written or oral, to the extent such agreements specifically pertain to the matters so settled. If the designees are unable to resolve such dispute within such 30-day period, any party may invoke the provisions of Section 2 below.

2) Arbitration. All claims, disputes, controversies, and other matters in question arising out of or relating to the Agreements, including claims for Indemnifiable Losses and disputes regarding the making of the Agreements, including claims of fraud in the inducement, or to the alleged breach hereof, shall be settled by negotiation between the parties as described in Section 1 above or, if negotiation is unsuccessful, by binding arbitration in accordance with procedures set forth in Section 3 and 4 below.

3) Notice. Notice of demand for binding arbitration shall be given in writing to the other party and shall be delivered personally or by facsimile (receipt confirmed) to an executive officer of such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

Medtronic Asset Management, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to AVI to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President, Alan P. Timmins

With a copy to:

HURLEY, LYNCH & RE, P.C.
747 SW Industrial Way
Bend, Oregon 97702
Attn: Robert A. Stout, Esq.

Any party may change the above–specified recipient and/or mailing address by notice to the other party given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by facsimile (upon appropriate electronic confirmation of successful transmission)) or on the day shown on the return receipt (if delivered by mail or delivery service). In no event may a notice of demand of any kind be filed more than two years after the date the claim, dispute, controversy, or other matter in question was asserted by one party against another, and if such demand is not timely filed, the claim, dispute, controversy, or other matter in question referenced in the demand shall be deemed released, waived, barred, and unenforceable for all time, and barred as if by statute of limitations.

4) Binding Arbitration. Upon filing of a notice of demand for binding arbitration by any party hereto, arbitration shall be commenced and conducted as follows:

(a) Arbitrators. All claims, disputes, controversies, and other matters (collectively "matters") in question shall be referred to and decided and settled by a standing panel of three independent arbitrators, one selected by each of AVI and Investor's representative and the third by the two arbitrators so selected. The third shall be a former judge of one of the U.S. District Courts or one of the U.S. Court of Appeals or such other classes of persons as the parties may agree. Selection of arbitrators shall be made within 30 days after the date of the first notice of demand given pursuant to Section 3 and within 30 days after any resignation, disability or other removal of such arbitrator. Following appointment, each arbitrator shall remain a member of the standing panel, subject to removal for just cause or resignation or disability; provided, however, an arbitrator can be removed by the party who appointed the arbitrator, or in the case of the third arbitrator, by either party for any reason at any time when no matter is in arbitration.

(b) Cost of Arbitration. The cost of each arbitration proceeding, including without limitation the arbitrators' compensation and expenses, hearing room charges, court reporter transcript charges etc., shall be borne by the party whom the arbitrators determine has not prevailed in such proceeding, or borne equally by the parties if the arbitrators determine that neither party has prevailed. The arbitrators shall also award the party that prevails substantially in its pre-hearing position its reasonable attorneys' fees and costs incurred in connection with the arbitration. The arbitrators are specifically instructed to award attorneys' fees for instances of abuse of the discovery process.

(c) Location of Proceedings. All arbitration proceedings shall be held in the county selected pursuant to Section 10.8 of the Investment Agreement unless the parties agree otherwise.

(d) Pre-hearing Discovery. The parties shall have the right to conduct and enforce pre-hearing discovery in accordance with the then current Federal Rules of Civil Procedure, subject to these limitations: Document discovery and other discovery shall be under the control of and enforceable by the arbitrators. The arbitrators shall permit and facilitate such other discovery as they shall determine is appropriate under the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective. The arbitrators shall decide discovery disputes. The arbitrators are empowered:

(i) to issue subpoenas to compel pre-hearing document or deposition discovery;

(ii) to enforce the discovery rights and obligations of the parties; and

(iii) to otherwise control the scheduling and conduct of the proceedings.

Notwithstanding any contrary foregoing provisions, the arbitrators shall have the power and authority to, and to the fullest extent practicable shall, abbreviate arbitration discovery in a manner that is fair to all parties in order to expedite the arbitration proceeding and render a final decision within six months after the pre-hearing conference.

(e) Pre-hearing Conference. Within 45 days after filing of notice of demand for binding arbitration, the arbitrators shall hold a pre-hearing conference to establish schedules for completion of discovery, for exchange of exhibit and witness lists, for arbitration briefs, for the hearing, and to decide procedural matters and all other questions that may be presented.

(f) Hearing Procedures. The hearing shall be conducted to preserve its privacy and to allow reasonable procedural due process. Rules of evidence need not be strictly followed, and the hearing shall be streamlined as follows:

(i) Documents shall be self-authenticating, subject to valid objection by the opposing party;

(ii) Expert reports, witness biographies, depositions, and affidavits may be utilized, subject to the opponent's right of a live cross-examination of the witness in person;

(iii) Charts, graphs, and summaries shall be utilized to present voluminous data, provided (i) that the underlying data was made available to the opposing party 30 days prior to the hearing, and (ii) that the preparer of each chart, graph, or summary is available for explanation and live cross-examination in person;

(iv) The hearing should be held on consecutive business days without interruption to the maximum extent practicable; and

(v) The arbitrators shall establish all other procedural rules for the conduct of the arbitration in accordance with the rules of arbitration of the Center for Public Resources.

(g) Governing Law. This arbitration provision shall be governed by, and all rights and obligations specifically enforceable under and pursuant to, the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the laws of the State of Minnesota shall be applied, without reference to the choice of law principles thereof, in resolving matters submitted to such arbitration.

(h) Consolidation. No arbitration shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement (other than affiliates of any such party, which affiliates may be included in the arbitration), except by written consent of the parties hereto containing a specific reference to this Agreement.

(i) Award. The arbitrators shall be required to render their final decision within six months after the pre-hearing conference. The arbitrators are empowered to render an award of general compensatory damages and equitable relief (including, without limitation, injunctive relief), but are not empowered to award punitive or presumptive damages. The award rendered by the arbitrators (1) shall be final; (2) shall not constitute a basis for collateral estoppel as to any issue; and (3) shall not be subject to vacation or modification, except in the event of fraud or gross misconduct on the part of the arbitrators.

(j) Confidentiality. The parties hereto will maintain the substance of any proceedings hereunder in confidence and make disclosures to others only to the extent necessary to properly conduct the proceedings.

THIS WARRANT, AND THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE HEREOF, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE REOFFERED OR SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT PURSUANT TO (1) REGISTRATION OR (2) AN OPINION OF COUNSEL FOR THE COMPANY OR OTHER COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED. THIS WARRANT IS ALSO SUBJECT TO THE TERMS OF AN INVESTMENT AGREEMENT DATED MAY 22, 2001.

WARRANT

To Purchase Shares of Common Stock of

AVI BIOPHARMA, INC.

June 20, 2001

AVI BioPharma, Inc., an Oregon corporation (the "Company"), for value received, hereby certifies that Medtronic Asset Management, Inc., a Minnesota corporation, or its registered assigns (the "Holder") is entitled, subject to the terms set forth below, upon exercise of this Warrant to purchase from the Company 3,000,000 shares of Common Stock, $0.0001 par value, of the Company (as further defined in Section 5 below, "Common Stock"). Until adjusted as provided by the terms of this Warrant, the exercise price per share (the "Exercise Price") shall be $10. The shares issuable upon exercise of this Warrant, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Shares."

This Warrant is further subject to the following provisions, terms and conditions:

1. Term. Subject to Section 13 below, this Warrant may be exercised by the Holder, in whole or in part, at any time before the close of business on the date five years after the date hereof.

2. Manner of Exercise. This Warrant may be exercised by the Holder, in whole or in part (but not as to any fraction of a share of Common Stock), by surrendering this Warrant, with the Exercise Form attached hereto as **Exhibit A** filled in and duly executed by such Holder or by such Holder's duly authorized attorney, to the Company at its principal office accompanied by payment of the Exercise Price in the amount of the Exercise Price multiplied by the number of shares as to which the Warrant is being exercised. The Exercise Price may be paid in the form of a check or wire transfer of funds.

3. Effective Date of Exercise. Each exercise of this Warrant shall be deemed effective as of the close of business on the day on which this Warrant is surrendered to the Company as provided in Section 2 or Section 3(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Shares shall be issuable upon such exercise shall be deemed to have become the holder or holders of record of the Warrant Shares represented by such certificates. Within 10 days after the exercise of this Warrant in full or in part, the Company will, at its expense, cause to be issued in the name of and delivered to the Holder or such other person as the Holder may (upon payment by such Holder of any applicable transfer taxes) direct: (i) a certificate or certificates for the number of full Warrant Shares to which such Holder is entitled upon such exercise, and (ii) unless this Warrant has expired, a new Warrant or Warrants (dated the date hereof and in form identical hereto) representing the right to purchase the remaining number of shares of Common Stock, if any, with respect to which this Warrant has not then been exercised.

4. Adjustments to Exercise Price. The above provisions are, however, subject to the following:

(a) (i) If the Company shall at any time after the date of this Warrant subdivide or combine the outstanding shares of Common Stock or declare a dividend payable in Common Stock, then the number of shares of Common Stock for which this Warrant may be exercised as of immediately prior to the subdivision, combination or record date for such dividend payable in Common Stock shall forthwith be proportionately decreased, in the case of combination, or increased, in the case of subdivision or dividend payable in Common Stock.

(ii) If the Company shall at any time after the date of this Warrant subdivide or combine the outstanding shares of Common Stock or declare a dividend payable in Common Stock, the Exercise Price in effect immediately prior to the subdivision, combination or record date for such dividend payable in Common Stock shall forthwith be proportionately increased, in the case of combination, or decreased, in the case of subdivision or dividend payable in Common Stock.

(b) If any capital reorganization or reclassification of the capital stock of the Company, or share exchange, combination, consolidation or merger of the Company with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, share exchange, combination, consolidation, merger or sale, lawful and adequate provision shall be made whereby the Holder shall thereafter have the right to receive upon exercise of this Warrant, upon the basis and upon the terms and conditions specified in this Warrant and in lieu of the shares of the Common Stock of the Company into which this Warrant could be exercisable or convertible, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the maximum number of shares of such stock issuable upon exercise of this Warrant, and in any such case appropriate provisions shall be made with respect to the rights and interests of Holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Exercise Price and of the number of shares purchasable upon exercise of this Warrant) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise hereof. The Company shall not effect any such share exchange, combination, consolidation, merger or sale, unless prior to the consummation thereof the successor corporation (if other than the Company) resulting from such share exchange, combination, consolidation or merger or the corporation purchasing such assets shall assume by written instrument executed and mailed to the Holder, at the last address of such Holder appearing on the books of the Company, the obligation to deliver to such Holder such shares of stock, securities or assets that, in accordance with the foregoing provisions, such Holder may thereafter be entitled to receive upon exercise of this Warrant.

(c) If at any time after the date of this Warrant the Company distributes to all holders of Common Stock any assets (excluding ordinary cash dividends), debt securities, or any rights or warrants to purchase debt securities, assets or other securities (excluding Common Stock covered by Sections 5(a) or (b)), the Exercise Price shall be adjusted in accordance with the formula:

$$E^1 = \frac{E \times (O \times M) - F}{O \times M}$$

where:

E^1 = the adjusted Exercise Price.
E = the current Exercise Price.
M = the average market price of Common Stock for the 30 consecutive trading days commencing 45 trading days before the record date mentioned below.
O = the number of shares of Common Stock outstanding on the record date mentioned below.
F = the fair market value on the record date of the aggregate of all assets, securities, rights or warrants distributed. The Company's Board of Directors shall determine the fair market value in the exercise of its reasonable judgment.

The adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of stockholders entitled to receive the distribution.

(d) Upon any adjustment of the Exercise Price, then and in each such case, the Company shall give written notice thereof, by first class mail or equivalent, postage prepaid, addressed to the Holder of this Warrant at the address of such Holder as shown on the books of the Company, which notice shall state the Exercise Price resulting from such adjustment and the increase or decrease, if any, in the number of shares for which this Warrant may be exercised, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

5. Common Stock. As used herein, the term "Common Stock" shall mean and include the Company's presently authorized shares of common stock and shall also include any capital stock of any class of the Company hereafter authorized that is not limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution, dissolution or winding up of the Company.

6. No Voting Rights. This Warrant shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company unless and until exercised or converted pursuant to the provisions hereof.

7. Exercise or Transfer of Warrant or Resale of Common Stock. The Holder, by acceptance hereof, agrees to give written notice to the Company before exercising this Warrant, or transferring this Warrant, in whole or in part, or transferring any shares of Common Stock issued upon the exercise hereof, of such Holder's intention to do so, describing briefly the manner of any proposed transfer. Such notice shall include an opinion of counsel reasonably satisfactory to the Company that (i) the proposed exercise or transfer may be effected without registration or qualification under the Securities Act of 1933, as amended (the "Act"), and any applicable state securities or blue sky laws, or (ii) the proposed exercise or transfer has been registered under such laws. Upon delivering such notice, such Holder shall be entitled to exercise or transfer this Warrant or such Warrant Shares, all in accordance with the terms of the notice delivered by such Holder to the Company; provided, that an appropriate legend may be endorsed on the certificates for such shares respecting restrictions upon transfer thereof necessary or advisable in the opinion of counsel to the Company to prevent further transfer that would be in violation of Section 5 of the Act and applicable state securities or blue sky laws.

If in the opinion of counsel to the Company or other counsel reasonably acceptable to the Company the proposed exercise, transfer or disposition of this Warrant or the Warrant Shares described in the written notice given pursuant to this Section 8 may not be effected without registration of this Warrant or the Warrant Shares, the Company shall promptly give written notice thereof to the Holder within 10 days after the Company receives such notice, and such holder will limit its activities in respect to such as, in the opinion of such counsel, is permitted by law.

Further, notwithstanding anything above to the contrary, this Warrant may not be transferred by the Holder hereof in warrant form except to a subsidiary of the Holder.

8. Covenants of the Company. The Company covenants and agrees that all shares that may be issued upon exercise of this Warrant will, upon issuance, be duly authorized and issued, fully paid, nonassessable and free from all taxes, liens and charges with respect to the issuance thereof. The Company further covenants and agrees that the Company will at all times have authorized, and reserved for the purpose of issuance upon exercise hereof, a sufficient number of shares of its Common Stock to provide for the exercise of this Warrant.

9. Certain Notices. The Holder shall be entitled to receive from the Company immediately upon declaration thereof and at least 20 days prior to the record date for determination of shareholders entitled thereto or to vote thereon (or, if no record date is set, prior to the event), written notice of any event that could require an adjustment pursuant to Section 5 hereof or of the dissolution or liquidation of the Company. All notices under this Warrant shall be in writing and shall be delivered personally or by telecopy (receipt confirmed) to such party (or, in the case of an entity, to an executive officer of such party) or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to the Holder, to:

Medtronic, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to the Company to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President

With separate copies to:

Robert A. Stout, Esq.
HURLEY, LYNCH & RE, P,.C.
747 SW Industrial Way
Bend, OR 97702

Any party may change the above–specified recipient and/or mailing address by notice to all other parties given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by telecopy) or on the day shown on the return receipt (if delivered by mail or delivery service).

10. Registration Rights. The Holders of this Warrant and the Warrant Shares are entitled to the rights and benefits of all of the terms, provisions and conditions of that certain Registration Rights Agreement dated of even date herewith between the Company and Medtronic Asset Management, Inc., provided an express sharing or assignment of such rights and benefits is made to each such Holder by such Holder's transferor. Notwithstanding the foregoing or any provisions of the Registration Rights Agreement to the contrary, the Holder agrees not to sell or transfer any Warrant Shares for at least thirty-two (32) days after conversion or exercise of this Warrant which resulted in the issuance of such Warrant Shares.

11. Miscellaneous.

(a) No amendment, modification or waiver of any provision of this Warrant shall be effective unless the same shall be in writing and signed by the holder hereof.

(b) This Warrant shall be governed by and construed in accordance with the laws of the State of Oregon.

12. Cancellation Rights. The Company may cancel this Warrant, to the extent it remains unexercised, at any time if the Daily Price has exceeded $20.00 for 20 consecutive trading days immediately preceding the date of notice of such cancellation, upon 190 days' notice given in accordance with Section 10 and Holder's failure to exercise this Warrant within such notice period. No consideration or price shall be payable by the Company for such cancellation. For the purpose of the foregoing sentence, the term "Daily Price" shall mean, for any relevant day, the closing bid price on that day as reported by the principal exchange or quotation system on which prices for the Common Stock are reported, and such $20.00 shall be subject to adjustment in the same manner in which the Exercise Price is subject to adjustment under Section 4 and the Holder is entitled to notice thereof under Section 4(d). The Holder may exercise this Warrant in whole or in part at any time during such 190-day notice period. This Warrant shall no longer be exercisable in whole or in part from and after the 191st day after such notice.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by its authorized officer and dated as of the date stated above.

AVI BIOPHARMA, INC.

By: Denis Burger

Its: CEO

Exhibit A

NOTICE OF EXERCISE OF WARRANT — To Be Executed by the Registered Holder in Order to Exercise the Warrant

The undersigned hereby irrevocably elects to exercise the attached Warrant to purchase, for cash pursuant to Section 2 thereof, _____ shares of Common Stock issuable upon the exercise of such Warrant. The undersigned requests that certificates for such shares be issued in the name of _____. If this Warrant is not fully exercised, the undersigned requests that a new Warrant to purchase the balance of shares remaining purchasable hereunder be issued in the name of _____.

Date: _____, 20__

[name of registered Holder]

[signature]

[street address]

[city, state, zip]

[tax identification number]

Exhibit 10.38

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated as of June 20, 2001 (this "Agreement"), is made by and among AVI BIOPHARMA, an Oregon corporation (the "Company"), and MEDTRONIC ASSET MANAGEMENT, INC., a Minnesota corporation ("Investor").

RECITALS:

A. This Agreement is made in connection with the Investment Agreement dated as of May 22, 2001 between Investor and the Company (the "Investment Agreement").

B. In order to induce Investor to execute and deliver the Investment Agreement, the Company has agreed to provide certain registration rights under the Securities Act and applicable state securities laws with respect to the shares of Company Common Stock, $0.0001 par value per share ("Common Stock") to be purchased by Investor pursuant to the Investment Agreement, the Warrant and the shares of Common Stock issuable upon exercise thereof.

In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Investor hereby agree as follows:

ARTICLE 1
DEFINITIONS

Capitalized terms used and not otherwise defined herein have the respective meanings given them set forth in the Investment Agreement. In addition, as used in this Agreement, the following terms have the following meanings:

1.1 "Holder" means Investor and any of its transferees or assignees who agree to become bound by the provisions of this Agreement in accordance with Article 9 hereof.

1.2 "Registrable Securities" means the Purchased Securities, including the Purchased Shares, Warrant and Warrant Shares as defined in the Investment Agreement and any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to the Purchased Shares.

1.3 "Registration Period" means the period between the date of this Agreement and the earlier of (i) the date on which all of the Registrable Securities have been sold by Investor and no further Registrable Securities may be issued in the future, (ii) the date on which all the Registrable Securities (in the opinion of the Company's counsel, which opinion is reasonably acceptable to Investor and its counsel) may be immediately sold by Investor without registration and without restriction (including without limitation as to volume by each holder thereof) as to the number of Registrable Securities to be sold, pursuant to Rule 144(k), or (iii) December 31, 2011.

1.4 "Registration Statement" means a Registration Statement of the Company filed under the Securities Act.

1.5 The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or statements in compliance with the Securities Act and pursuant to Rule 415 and the declaration or ordering of effectiveness of such Registration Statement by the SEC.

1.6 "Rule 415" means Rule 415 under the Securities Act, or any successor Rule providing for offering securities on a continuous basis, and applicable rules and regulations thereunder.

ARTICLE 2
REGISTRATION

2.1 Mandatory Registration. The Company will use best efforts to file with the SEC a Registration Statement on Form S-3 (or any successor form thereto, "Form S-3") registering the Registrable Securities for resale. Investor shall have the right to request in writing any number of registrations on Form S-3 for any or all Registrable Securities held by the Investor, which notice shall specify the number of Registrable Securities to be so registered; provided that each such demand shall include a request for registration of at least $1,000,000 in Registrable Securities. The Company shall use its best efforts to effect promptly, and in any event within sixty (60) days after request, the registration of such Registrable Securities and to maintain such registration for at least one hundred eighty (180) days. If Form S-3 is not available at that time, then the Company will file a Registration Statement on such form as is then available to effect a registration of the Registrable Securities, subject to the consent of Investor, which consent will not be unreasonably withheld; provided, the Company shall not be required to effect more than two registrations on Form S-1 or other form of general registration.

2.2 Effectiveness of the Registration Statement. The Company will use its best efforts to cause each Registration Statement to be declared effective by the SEC as soon as practicable after filing. The Company's best efforts will include, but will not be limited to, promptly responding to all comments received from the staff of the SEC. If the Company receives notification from the SEC that the Registration Statement will receive no action or review from the SEC, then the Company will cause the Registration Statement to become effective within five business days after such SEC notification. Once the Registration Statement is declared effective by the SEC, the Company will cause the Registration Statement to remain effective throughout the period set forth in Section 2.1, except as permitted under Section 3.

2.3 Piggyback Registrations.

(a) If, at any time prior to the expiration of the Registration Period, a Registration Statement is not effective with respect to all of the Registrable Securities and the Company decides to register any of its securities for its own account or for the account of others, then the Company will promptly give Investor written notice thereof and will use its best efforts to include in such registration all or any part of the Registrable Securities requested by such Investor to be included therein (excluding any Registrable Securities previously included in a Registration Statement). This requirement does not apply to Company registrations on Form S-4 or S-8 or their equivalents relating to equity securities to be issued solely in connection with an acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans. Investor must give its request for registration under this paragraph to the Company in writing within 20 days after receipt from the Company of notice of such pending registration. If the registration for which the Company gives notice is a public offering involving an underwriting, the Company will so advise Investor as part of the above-described written notice. In that event, if the managing underwriter(s) of the public offering impose a limitation on the number of shares of Common Stock that may be included in the Registration Statement

because, in such underwriter(s)' judgment, such limitation would be necessary to effect an orderly public distribution, then the Company will be obligated to include only such limited portion, if any, of the Registrable Securities with respect to which Investor has requested inclusion hereunder. Subject to provisions for existing holders of preferred or preferential piggyback rights pursuant to agreements dated prior to the date hereof, any exclusion of Registrable Securities will be made pro rata among all holders of the Company's securities seeking to include shares of Common Stock in proportion to the number of shares of Common Stock sought to be included by those holders. The Company may grant similar piggyback registration rights on a priority with those granted herein to others ("Additional Holders") in connection with financings and/or acquisition of stock, assets or technology rights. However, the Company will not exclude any Registrable Securities unless the Company has first excluded all outstanding securities the holders of which are not entitled by prior right (pursuant to an agreement dated prior to the date hereof) or as Additional Holders to inclusion of securities in such Registration Statement or are not entitled to pro rata inclusion with the Registrable Securities.

(b) No right to registration of Registrable Securities under this Section 2.3 limits in any way the registration required under Section 2.1 above. The obligations of the Company under this Section 2.3 with respect to any particular Registrable Securities expire upon the earlier of (i) the effectiveness of a Registration Statement filed pursuant to Section 2.1 above with respect to such Registrable Securities; (ii) after the Company has afforded the opportunity for Investor to exercise registration rights under this Section 2.3 with respect to such Registrable Securities for two registrations (provided, however, that if Investor has had any Registrable Securities excluded from any Registration Statement in accordance with this Section 2.3, Investor may include in any additional Registration Statement filed by the Company the Registrable Securities so excluded), (iii) when all of the Registrable Securities held by Investor may be sold by Investor under Rule 144(k) without being subject to any volume restrictions, or (iv) December 31, 2011.

2.4 Reporting Status; Eligibility to Use Form S-3. The Company represents and warrants that its Common Stock is registered under Section 12 of the Exchange Act. Throughout the Registration Period, the Company will timely file all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the reporting requirements of the Exchange Act, and will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination. The Company currently meets, and will take all reasonably necessary action to continue to meet, the "registrant eligibility" requirements set forth in the general instructions to Form S-3 to enable the registration of the Registrable Securities.

ARTICLE 3
ADDITIONAL OBLIGATIONS OF THE COMPANY

3.1 Continued Effectiveness of Registration Statement. Subject to the limitations set forth in Section 3.6, the Company will use its best efforts to keep the Registration Statement covering the Registrable Securities effective for one hundred eighty (180) days. In the event that the number of shares available under a Registration Statement filed pursuant to this Agreement is insufficient to cover all of the Registrable Securities issued, the Company will (if permitted) amend the Registration Statement or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover all of the Registrable Securities. The Company will file such amendment or new Registration Statement as soon as practicable, but in no event later than 30 business days after the necessity therefor arises (based upon the market price of the Common Stock and other relevant factors on which the Company reasonably elects to rely). The Company will use its best efforts to cause such amendment or new Registration Statement to become effective as soon as is practicable after the filing thereof, but in no event later than 90 days after the date on which the Company reasonably first determines (or reasonably should have determined) the need therefor.

3.2 Accuracy of Registration Statement. Any Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) filed by the Company covering Registrable Securities will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The Company will prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to permit sales pursuant to the Registration Statement at all times during the Registration Period, and, during such period, will comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement until the termination of the Registration Period, or if earlier, until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by Investor as set forth in the Registration Statement.

3.3 Furnishing Documentation. The Company will furnish to Investor or to its legal counsel, (a) promptly after each document is prepared and publicly distributed, filed with the SEC or received by the Company, one copy of any Registration Statement filed pursuant to this Agreement and any amendments thereto, each preliminary prospectus and final prospectus and each amendment or supplement thereto; and (b) a number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto, and such other documents as Investor may reasonably request in order to facilitate the disposition of the Registrable Securities. The Company will immediately notify by facsimile Investor of the effectiveness of the Registration Statement and any post-effective amendment.

3.4 Additional Obligations. The Company will use its best efforts to (a) register and qualify the Registrable Securities covered by a Registration Statement under such other securities or blue sky laws of such jurisdictions as Investor reasonably requests, (b) prepare and file in those jurisdictions any amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain their effectiveness during the Registration Period, (c) take any other actions necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (d) take any other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions. Notwithstanding the foregoing, the Company is not required, in connection such obligations, to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3.4, (ii) subject itself to general taxation in any such jurisdiction, (iii) file a general consent to service of process in any such jurisdiction where it has not so consented, (iv) provide any undertakings that cause material expense or burden to the Company, or (v) make any change in its charter or bylaws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders.

3.5 Underwritten Offerings. If Investor selects underwriters reasonably acceptable to the Company for the offering of Registrable Securities pursuant to a Registration Statement, the Company will enter into and perform its obligations under an underwriting agreement in usual and customary form including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering.

3.6 Suspension of Registration.

(a) The Company will notify (by telephone and also by facsimile and reputable overnight courier) Investor of the happening of any event of which the Company has knowledge as a result of which the prospectus included in the 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, in light of the circumstances under which they were made, not misleading. The Company will make such notification as promptly as practicable after the Company becomes aware of the event , will promptly (but in no event more than ten business days) prepare a supplement or amendment to the Registration Statement to correct such untrue statement or omission, and will deliver a number of copies of such supplement or amendment to Investor as Investor may reasonably request.

(b) Notwithstanding the obligations under Section 3.6(a), if in the good faith judgment of the Company, following consultation with legal counsel, it would be detrimental to the Company and its stockholders for resales of Registrable Securities to be made pursuant to the Registration Statement due to (i) the existence of a material development involving the Company which the Company would be obligated to disclose in the Registration Statement, which disclosure would be premature or otherwise inadvisable at such time or would have a Material Adverse Effect upon the Company and its stockholders, or (ii) in the good faith judgment of the Company's Board of Directors, it would adversely affect or require premature disclosure of the filing of a Company-initiated registration of any class of its equity securities, the Company will have the right to suspend the use of the Registration Statement for a period of not more than 60 days, provided, however, that the Company may so defer or suspend the use of the Registration Statement no more than one time in any twelve-month period, and provided, further, that after deferring or suspending the use of the Registration Statement, the Company may not again defer or suspend the use of the Registration Statement until a period of thirty days has elapsed after resumption of the use of the Registration Statement.

(c) Subject to the Company's rights under this Section 3, the Company will use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement and, if such an order is issued, will use its best efforts to obtain the withdrawal of such order at the earliest possible time and to notify Investor (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

(d) Notwithstanding anything to the contrary contained herein or in the Investment Agreement, if the use of the Registration Statement is suspended by the Company, the Company will promptly give notice of the suspension to Investor and will promptly notify Investor as soon as the use of the Registration Statement may be resumed.

3.7 Review by Investor. The Company will permit legal counsel, designated by Investor, to review the Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof) a reasonable period of time prior to their filing with the SEC, and will not file any document in a form to which such counsel reasonably objects, unless otherwise required by law in the opinion of the Company's counsel. The sections of any such Registration Statement including information with respect to Investor, Investor's beneficial ownership of securities of the Company or Investor's intended method of disposition of Registrable Securities must conform to the information provided to the Company by Investor.

3.8 Comfort Letter; Legal Opinion. At the request of Investor and on the date that Registrable Securities are delivered to an underwriter for sale in connection with the Registration Statement, the Company will furnish to Investor and the underwriters (i) a letter, dated such date, from the Company's independent certified public accountants, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and (ii) an opinion, dated such date, from counsel representing the Company for purposes of the Registration Statement, in form and substance as is customarily given in an underwritten public offering, addressed to the underwriters and Investor.

3.9 Due Diligence; Confidentiality.

(a) The Company will make available for inspection by Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by Investor or underwriter (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as each Inspector reasonably deems necessary to enable the Inspector to exercise its due diligence responsibility. The Company will cause its officers, directors and employees to supply all information that any Inspector may reasonably request for purposes of performing such due diligence.

(b) Each Inspector will hold in confidence, and will not make any disclosure (except to another Inspector) of, any Records or other information that the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, (iii) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement (to the knowledge of the relevant Inspector), (iv) the Records or other information was developed independently by an Inspector without breach of this Agreement, (v) the information was known to the Inspector before receipt of such information from the Company, or (vi) the information was disclosed to the Inspector by a third party without restriction. The Company is not required to disclose any confidential information in the Records to any Inspector unless and until such Inspector has entered into a confidentiality agreement (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially in the form of this Section 3.9. Investor will, upon learning that disclosure of Records containing confidential information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein will be deemed to limit Investor's ability to sell Registrable Securities in a manner that is otherwise consistent with applicable laws and regulations.

(c) The Company will hold in confidence, and will not make any disclosure of, information concerning Investor provided to the Company under this Agreement unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement (v) the information was disclosed to the Company by a third party without restriction or (vi) Investor consents to the form and content of any such disclosure. If the Company learns that disclosure of such information concerning Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, the Company will give prompt notice to Investor prior to making such disclosure and allow Investor, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

3.10 Listing. The Company will (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each national securities exchange on which Common Stock of the Company is then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) to the extent the Common Stock is not then listed on a national securities exchange, secure the designation and quotation of all of the Registrable Securities covered by each Registration Statement on Nasdaq and, without limiting the generality of the foregoing, arrange for at least two market makers to register with the National Association of Securities Dealers, Inc. as such with respect to such Registrable Securities.

3.11 Transfer Agent; Registrar. The Company will provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement.

3.12 Share Certificates. The Company will cooperate with Investor and with the managing underwriter(s), if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to a Registration Statement and will enable such certificates to be in such denominations or amounts as the case may be, and registered in such names as Investor or the managing underwriter(s), if any, may reasonably request.

3.13 Unrestricted Securities. If, (a) the Purchased Shares represented by a certificate have been registered under an effective Registration Statement filed under the Securities Act and sold under such Registration Statement, (b) Investor provides the Company and it's transfer agent with reasonable assurances that such shares can be sold under Rule 144, or (c) the Purchased Shares represented by a certificate can be sold without restriction as to the number of securities sold under Rule 144(k), the Company will permit the transfer of such securities, and will instruct its transfer agent to issue one or more certificates, free from any restrictive legend, in such name and in such denominations as specified by Investor. Notwithstanding anything herein to the contrary, the Purchased Shares may be pledged as collateral in connection with a bona fide margin account or other lending arrangement; provided that such pledge will not alter the provisions of this section with respect to the removal of restrictive legends.

3.14 Plan of Distribution. At the request of Investor, the Company will promptly prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement, and the prospectus used in connection with the Registration Statement, as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

3.15 Securities Laws Compliance. The Company will comply with all applicable laws related to any Registration Statement relating to the sale of Registrable Securities and to offering and sale of securities and with all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act, the Exchange Act and the rules and regulations promulgated by the SEC).

3.16 Further Assurances. The Company will take all other reasonable actions as Investor or the underwriters, if any, may reasonably request to expedite and facilitate disposition by Investor of the Registrable Securities pursuant to the Registration Statement.

ARTICLE 4
OBLIGATIONS OF INVESTOR

4.1 Information. As a condition to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of Investor, Investor will furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as is reasonably required by the Company to effect the registration of the Registrable Securities. At least 15 business days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Company will notify Investor of the information the Company requires from Investor if Investor elects to have any of its Registrable Securities included in the Registration Statement. If, within three business days prior to the filing date, the Company has not received the requested information from Investor, then the Company may file the Registration Statement without including Registrable Securities of Investor.

4.2 Further Assurances. Investor will cooperate with the Company, as reasonably requested by the Company, in connection with the preparation and filing of any Registration Statement hereunder, unless Investor has notified the Company in writing of Investor's election to exclude all of Investor's Registrable Securities from the Registration Statement.

4.3 Suspension of Sales. Upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.6, Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until it receives copies of the supplemented or amended prospectus contemplated by Section 3.6. If so directed by the Company, Investor will deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in Investor's possession (other than a limited number of file copies) of the prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

ARTICLE 5
EXPENSES OF REGISTRATION

The Company will bear all reasonable expenses, other than underwriting discounts and commissions, and transfer taxes, if any, incurred in connection with registrations, filings or qualifications pursuant to Articles 2 and 3 of this Agreement, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, the fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of Investor's legal counsel.

ARTICLE 6
INDEMNIFICATION

In the event that any Registrable Securities are included in a Registration Statement under this Agreement:

6.1 To the extent permitted by law, the Company will indemnify and hold harmless Investor, any underwriter(as defined in the Securities Act) for Investor, any directors or officers of Investor or such underwriter and any person who controls Investor or such underwriter within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Person") against any losses, claims, damages, expenses or liabilities (joint or several) (collectively, and together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened in respect thereof, "Claims") to which any of them become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Claims arise out of or are based upon any of the following statements, omissions or violations in a Registration Statement (including any exhibits or schedules thereto) filed pursuant to this Agreement, any amendment or supplement thereof or any prospectus (preliminary or final) included therein:(a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment or supplement thereof or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (b) any untrue statement or alleged untrue statement of a material fact contained in the prospectus (as it may be amended or supplemented) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (c) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any other law, including without limitation any state securities law or any rule or regulation thereunder (the matters in the foregoing clauses (a) through (c) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6.3 with respect to the number of legal counsel, the Company will reimburse Investor and each such underwriter or controlling person and each such other Indemnified Person, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6.1 (i) does not apply to a Claim arising out of or based upon a violation that occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person expressly for use in connection with the preparation of the Registration Statement (including any exhibits or schedules thereto) or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3.3 hereof; and (ii) does not apply to amounts paid in settlement of any Claim if such settlement is made without the prior written consent of the Company, which consent will not be unreasonably withheld. This indemnity obligation will remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Persons and will survive the transfer of the Registrable Securities by Investor under Article 9 of this Agreement.

6.2 In connection with any Registration Statement in which Investor is participating, Investor will indemnify and hold harmless, to the same extent and in the same manner set forth in Section 6.1 above, the Company, each of its directors, each of its officers who signs the Registration Statement, each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder within the meaning of the Securities Act or the Exchange Act (each an "Indemnified Person") against any Claim to which any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Claim arises out of or is based upon any Violation, in each case to the extent (and only to the extent) that such violation occurs in reliance upon and in conformity with written information furnished to the Company by Investor expressly for use in connection with such Registration Statement. Subject to the restrictions set forth in Section 6.3, Investor will promptly reimburse any legal or other expenses (promptly as such expenses are incurred and due and payable) reasonably incurred by them in connection with investigating or defending any such Claim. However, the indemnity agreement contained in this Section 6.2 does not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of Investor, which consent will not be unreasonably withheld, and Investor will not be liable under this Agreement (including this Section 6.2 and Article 7) for the amount of any Claim that exceeds the net proceeds actually received by Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. This indemnity will remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party and will survive the transfer of the Registrable Securities by Investor under Article 9 of this Agreement.

6.3 Promptly after receipt by an Indemnified Person under this Article 6 of notice of the commencement of any action (including any governmental action), such Indemnified Person will, if a Claim in respect thereof is to be made against any indemnifying party under this Article 6, deliver to the indemnifying party a written notice of the commencement thereof. The indemnifying party may participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly given notice, assume control of the defense thereof with counsel mutually satisfactory to the indemnifying parties and the Indemnified Person. In that case, the indemnifying party will diligently pursue such defense. If, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person and the indemnifying party would be inappropriate due to actual or potential conflicts of interest between the Indemnified Person and any other party represented by such counsel in such proceeding or the actual or potential defendants in, or targets of, any such action including the Indemnified Person, and any such Indemnified Person reasonably determines that there may be legal defenses available to such Indemnified Person that are different from or in addition to those available to the indemnifying party, then the Indemnified Person is entitled to assume such defense and may retain its own counsel, with the fees and expenses to be paid by the indemnifying party. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action does not relieve an indemnifying party of any liability to an Indemnified Person under this Article 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The indemnification required by this Article 6 will be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

ARTICLE 7
CONTRIBUTION

To the extent that any indemnification provided for herein is prohibited or limited by law, the indemnifying party will make the maximum contribution with respect to any amounts for which it would otherwise be liable under Article 6 to the fullest extent permitted by law. However, (a) no contribution will be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Article 6, and (b) Investor's contribution (together with any indemnification or other obligations under this Agreement) will be limited in amount to the net amount of proceeds received by Investor from the sale of such Registrable Securities.

ARTICLE 8
EXCHANGE ACT REPORTING

In order to make available to Investor the benefits of Rule 144 or any similar rule or regulation of the SEC that may at any time permit Investor to sell securities of the Company to the public without registration, the Company will:

(a) File with the SEC in a timely manner, and make and keep available, all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements (it being understood that nothing herein limits the Company's obligations under Section 5.2 of the Investment Agreement) and the filing and availability of such reports and other documents is required for the applicable provisions of Rule 144; and

(b) Furnish to Investor, so long as Investor holds Registrable Securities, promptly upon Investor's request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents filed by the Company with the SEC and (iii) such other information as may be reasonably requested to permit Investor to sell such securities pursuant to Rule 144 without registration.

ARTICLE 9
ASSIGNMENT OF REGISTRATION RIGHTS

The rights of Investor hereunder, including the right to have the Company register Registrable Securities pursuant to this Agreement, will be automatically assigned by Investor to transferees or assignees of all or any portion of the Registrable Securities, but only if (a) Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (b) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, (c) after such transferor assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws, and (d) at or before the time the Company received the written notice contemplated by clause (b) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

ARTICLE 10
AMENDMENT OF REGISTRATION RIGHTS

This Agreement may be amended and the obligations hereunder may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and Investor. Any amendment or waiver effected in accordance with this Article 10 is binding upon Investor and the Company.

ARTICLE 11
MISCELLANEOUS

11.1 Conflicting Instructions. A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company will act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

11.2 Notices. Any notices required or permitted to be given under the terms of this Agreement will be given as set forth in the Investment Agreement.

11.3 Waiver. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, does not operate as a waiver thereof.

11.4 Governing Law. The formation, legality, validity, enforceability and interpretation of this Agreement shall be governed by the laws of the State of Minnesota, without giving effect to the principles of conflict of laws; provided, however, that nothing in Minnesota procedural law shall be deemed to alter or affect the applicability of the Federal Arbitration Act as governing arbitration of disputes as provided in Section 11.14 and, provided further, that no Minnesota laws or rules of arbitration shall be applicable. Subject to Section 11.14 hereof, if arbitration is sought by Investor, such arbitration shall be in Multnomah County, Oregon; and, if sought by AVI, such arbitration shall be in Hennepin County, Minnesota; and in each such case, the parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in such county with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby, and irrevocably consent to the exclusive jurisdiction and venue of such courts and waive any objections they may have at any time to such exclusive jurisdiction and venue.

11.5 Severability. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

11.6 Entire Agreement. This Agreement and the Investment Agreement (including all schedules and exhibits hereto and thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein, with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

11.7 Successors and Assigns. Subject to the requirements of Article 9 hereof, this Agreement inures to the benefit of and is binding upon the successors and assigns of each of the parties hereto. Notwithstanding anything to the contrary herein, including, without limitation, Article 9, Investor's rights hereunder are assignable to and exercisable by a bona fide pledge of the Registrable Securities in connection with an Investor's margin or brokerage accounts.

11.8 Use of Pronouns. All pronouns refer to the masculine, feminine or neuter, singular or plural, as the context may require.

11.9 Headings. The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

11.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all of which constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission, and facsimile signatures are binding on the parties hereto.

11.11 Further Assurances. Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

11.12 Consents. All consents and other determinations to be made by Investor pursuant to this Agreement will be made by Investor.

11.13 No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

11.14 Arbitration. Any dispute arising out of or relating to this Agreement, including the formation, interpretation or alleged breach hereof, shall be settled in accordance with Exhibit E to the Investment Agreement. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may be entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

IN WITNESS WHEREOF, Investor and the Company have caused this Registration Rights Agreement to be duly executed as of the date first above written.

AVI BIOPHARMA, INC.

By: /s/ Denis Burger

Its: CEO

MEDTRONIC ASSET MANAGEMENT, INC.

By: /s/ Michael D. Ellwein

Its: VP

Exhibit 10.39

LICENSE AND DEVELOPMENT AGREEMENT [1]

THIS LICENSE AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of June 20, 2001 between AVI BIOPHARMA, INC. ("AVI"), an Oregon corporation, and MEDTRONIC, INC. ("Medtronic"), a Minnesota corporation.

RECITALS

WHEREAS, AVI has developed technology relating to antisense compounds which may have application in the treatment of vascular disease;

WHEREAS, Medtronic makes and sells medical devices relating to the treatment of vascular disease;

WHEREAS, an affiliate of Medtronic, Medtronic Asset Management, Inc. ("MAMI"), has entered into an Investment Agreement dated as of May 22, 2001 (the "Investment Agreement") pursuant to which, among other things, MAMI has purchased, and AVI has sold, certain shares of AVI Common Stock and a Warrant to purchase certain shares of AVI Common Stock;

WHEREAS, AVI desires to grant, and Medtronic desires to obtain, the rights set forth herein;

WHEREAS, AVI and Medtronic are entering into a Supply Agreement of even date herewith (the "Supply Agreement") regarding AVI's supplying Medtronic's requirements for the Drug; and

WHEREAS, the parties desire that Medtronic attempt to develop products using the Technology (as defined below) for the treatment of vascular disease through non-systemic applications.

AGREEMENT

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Additional License Agreement" has the meaning given in Section 4.4(c).

"Additional Supply Agreement" has the meaning given in Section 4.4(d).

"Affiliate" of a specified person (natural or juridical) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

[1] Information was omitted from this document pursuant to a request for confidential treatment submitted to the SEC; omitted information is marked with ***. The omitted material has been filed separately with the SEC.

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

"* * * Agreement" means the * * * Agreement dated * * * by and between AVI and * * *, as amended from time to time.

"Compound" means (a) any "drug" as defined in the Federal Food, Drug and Cosmetic Act, as amended, not licensed hereunder and all derivatives and analogues of such drug, (b) any "biological product" as defined in the Public Health Service Act, as amended, not licensed hereunder and all derivatives and analogues of such biological product and (c) the antisense compounds not licensed hereunder.

"Compound Option Period" means the period commencing on the First Closing Date (as defined in the Investment Agreement) and continuing until termination of this Agreement.

"Drug" means formulation or formulations of antisense compounds (including the * * * substance known as * * *) that target the genes listed on Exhibit B attached hereto, all derivatives and analogues thereof, and all modifications and improvements thereto.

"Exclusivity Termination Date" means, with respect to a Compound, the date which is * * *.

* * *

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

"FDA" means the U.S. Food and Drug Administration.

"FDA Approval" means the receipt by Medtronic of all approvals by the FDA necessary or required for the commercialization in the United States of a Royalty Product.

"Field" means the treatment of vascular disease * * *.

"First Commercial US Sale" means the first commercial sale of a Royalty Product in the United States pursuant to Medtronic's customary commercial release executive approval procedures and guidelines. Commercial sales do not include sales for use in clinical trials or other testing purposes.

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

"Invention" means any invention, discovery, know-how, trade secret, data, information, technology, process or concept, whether or not patented or patentable, and whether or not memorialized in writing.

"Investment Agreement" means the Investment Agreement dated May 22, 2001 by and between AVI and Medtronic Asset Management, Inc.

"Joint Inventions" is defined in Section 6.3.

"Know-How" means all know-how, trade secrets, expertise, Inventions, discoveries and technical information now or hereafter owned by, licensed to, possessed by, or under the control of, AVI which are necessary, appropriate or useful for designing, developing, processing, manufacturing, using, selling or delivering the Drug within the Field, including but not limited to information embodied in drawings, designs, copyrights, copyright registrations and applications, trademarks, service marks and registrations thereof and applications therefor, patent applications, material specifications, processing instructions, formulas, equipment specifications, product specifications, confidential data, computer software, electronic files, research notebooks, invention disclosures, research and development reports and the like related thereto, and all amendments, modifications, upgrades and improvements to any of the foregoing, occurring before or during the term of this Agreement.

"Liens" means liens, mortgages, charges, security interests, claims, voting trusts, pledges, encumbrances, options, assessments, restrictions, licenses, sublicenses, or third party or spousal interests of any nature.

"Net Sales" of Royalty Products with respect to a particular period means * * *.

"Patents" means (a) the patents and patent applications, together with any patents that may issue based thereon, set forth on Exhibit A; (b) any other patents or patent applications now or hereafter owned by or licensed to AVI that are necessary, appropriate or useful for designing, developing, processing, manufacturing, using, selling or delivering the Drug within the Field; (c) all continuation, divisional, re-issue, re-examination and substitution applications that may be filed, before or during the term of this Agreement, by or for the benefit of AVI based on the foregoing referenced patents or patent application, together with any patents that may issue based thereon; and (d) all foreign applications that may be filed, before or during the term of this Agreement, by or for the benefit of AVI based on the foregoing referenced patents and patent applications, together with all patents which may issue based thereon.

"* * * License" means the * * * Agreement-* * * by and between * * * and AVI * * *, dated * * * as amended from time to time, covering certain patents involving * * *.

"Restenosis" means * * *.

"Restenosis Rate" shall mean the rate at which Restenosis occurs in the clinical trial.

"Royalty Product" means the Drug * * *. No more than one (1) payment calculated in accordance with Section 3.3 shall be paid on any single product covered by the Patents even though such product, including its manufacture, sale or use may be covered by Valid Claims of more than one patent included in the Patents.

"Technology" means the Patents and the Know-How.

"Third Closing Milestone" shall have the meaning set forth in the Investment Agreement.

"Unexpired" shall mean a patent that has not Expired.

"Valid Claim" means a claim in an Unexpired patent included with the Patents which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal and which has not been admitted to be invalid or unenforceable through reissue or disclaimer.

1.2 Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural, and vice-versa.

(c) References to an "Exhibit" or to a "Schedule" are, unless otherwise specified, to one of the Exhibits or Schedules attached to or referenced in this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

(d) The term "person" includes any individual, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof.

ARTICLE 2
LICENSE TO MEDTRONIC

2.1 Grant of License. Subject to the terms and conditions of this Agreement, AVI hereby grants to Medtronic an irrevocable, worldwide, sublicensable, exclusive license to the Technology to make, have made, use, import, export, distribute, sell, offer to sell and have sold the Drug in the Field and to make, have made, use, import, export, distribute, sell, offer to sell and have sold products incorporating or utilizing the Drug and/or the Technology in the Field, practice methods covered thereby, and otherwise to commercialize and exploit, the Drug and/or the Technology in the Field.

2.2 Technology Transfer. AVI shall, upon Medtronic's reasonable request from time to time, provide to Medtronic at no charge available drawings, specifications, processes, materials, and any manufacturing procedures and such other documentation and Know-How as is reasonably necessary or useful to enable Medtronic to fully utilize the license granted to Medtronic under this Agreement. In addition, AVI will make available personnel as requested by Medtronic, to provide such individual training to Medtronic technical and manufacturing personnel as is necessary to enable Medtronic to fully utilize the license granted to Medtronic under this Agreement, at such reasonable times and places as Medtronic may request from time to time, including, without limitation, to complete any development of the Technology in the Field, and to assist in the transfer of any manufacturing and regulatory submissions (including raw and compiled clinical data), certificates or other documents or approvals.

ARTICLE 3
FEES, ROYALTIES AND REPORTS

3.1 Fee Based on First Commercial US Sale.

(a) Medtronic shall pay to AVI an up-front one-time licensing fee of * * * within thirty (30) days after the date of the First Commercial US Sale of a Royalty Product, provided that Medtronic has received FDA Approval with respect thereto before * * * (or ***, if at any time the regulatory process necessary or required to obtain FDA Approval consists of * * * followed by the * * *).

(b) The parties acknowledge and agree that if FDA Approval occurs on or after * * * (or * * *, if applicable), then no fee shall be payable under this Section 3.1. Further, the fee under this Section 3.1 shall be payable only with respect to the first system incorporating any Royalty Product, and no additional fees shall be payable under this Section 3.1 for the first commercial sale in the U.S. or outside the U.S. of other systems incorporating Royalty Products.

3.2 Fee Based on Clinical Study Restenosis Rate.

(a) If the Restenosis Rate in the clinical trial conducted by Medtronic in the U.S., the European Union or Japan in order to obtain regulatory approval for the commercial sale of the Royalty Product in the United States is equal to or less than *** percent (* * *%), then Medtronic will pay AVI an up-front one-time licensing fee of * * * within sixty (60) days after the completion of such study, provided, however, that such payment of such licensing fee shall not occur unless and until Medtronic has received FDA Approval for the Royalty Product to which such study pertained.

(b) The parties acknowledge and agree that if the Restenosis Rate exceeds *** percent (***%), then no fee shall be payable under this Section 3.2.

3.3 Earned Royalty.

(a) Subject to the terms of this Agreement, Medtronic shall pay to AVI a royalty equal to *** percent (***%) of Medtronic's Net Sales of Royalty Products.

(b) If Medtronic determines that, in order to make the Drug functional, fully utilize the license granted hereunder or to commercialize a product incorporating or utilizing the Drug or the Technology, it is required to make a payment to one or more third parties because of the rights of any such third party, then the royalties due under Section 3.3(a) to AVI shall be reduced by *** percent (***%) of any payments due to such third parties, provided, however, the application of the foregoing shall not reduce the amount due to AVI under Section 3.3(a) to less than *** percent (***%).

(c) Provided that AVI has complied with its obligations set forth in Section 5.4, the royalty payable pursuant to Section 3.3(a) shall be increased by * * * that AVI is required to make pursuant to * * * for sales by Medtronic. Such increase is not subject to reduction under Section 3.3(b) (including as Section 3.3(b) may be modified pursuant to Section 4.2).

(d) After the date hereof, if the parties agree that AVI needs to obtain rights to a third party patent that it does not have rights to on the date hereof to commercialize the Drug within the Field, then the parties shall agree on the allocation between the parties of the cost of obtaining such rights (including any royalties that may be payable).

3.4 Reports and Payments. Within sixty (60) days after the end of each calendar quarter, Medtronic shall provide AVI with a written report indicating the amount of Net Sales of Royalty Products during such preceding period and the amount of the royalties due for such period. Simultaneous with making such report, Medtronic shall pay to AVI the amount of royalties then due. Notwithstanding the foregoing, if AVI is obligated to make any royalty payments to third parties with respect to sales by Medtronic hereunder within 45 days or less of the end of each calendar quarter, then such written report and the payment of royalties by Medtronic shall be due within 45 days after the end of each calendar quarter. With respect to sales of Royalty Products outside the United States on which any earned royalties are payable hereunder, conversions to U.S. dollars, if applicable, shall be made in accordance with Medtronic's standard accounting policy for conversion of foreign currencies. Notwithstanding anything to the contrary contained in this Agreement, Medtronic shall be entitled to withhold, from earned royalties payable hereunder, all taxes thereon required, by competent governmental authorities, to be withheld.

3.5 Records. Medtronic agrees to keep accurate written records sufficient in detail to enable the royalties payable under this Agreement by Medtronic to be determined and verified for a period of * * * after the delivery of any royalty report (or such longer period of time as may be necessary for AVI to comply with its reporting requirements under * * *).

3.6 Audit of Records. Upon reasonable notice and during regular business hours, Medtronic shall from time to time, but no more frequently than once annually (or as often as may be necessary for AVI to comply with requirements set forth in * * *), make available the records referred to in Section 3.5 for audit at AVI's expense by independent representatives selected by AVI and reasonably acceptable to Medtronic to verify the accuracy of the reports provided to AVI. Such representatives shall execute a suitable confidentiality agreement reasonably acceptable to Medtronic prior to conducting such audit. Such representatives may disclose to AVI only their conclusions regarding the accuracy of royalty payments and of records related thereto, and shall not disclose

Medtronic's information to AVI without the prior written consent of Medtronic. No claim may be asserted by AVI against Medtronic for any errors unless made within * * * following completion of such examination or audit made pursuant to this Section 3.6. The right to audit shall extend for * * * (or such longer period of time as may be necessary for AVI to comply with its reporting requirements under * * *) from delivery of any royalty report and thereafter any royalty report shall be deemed complete and accurate. Each royalty report shall be subject to only one such examination and audit. The party benefiting from any discrepancy will promptly pay the amount of such discrepancy to the other. If a discrepancy is found that is greater than * * * in any calendar quarter and AVI is the party benefited, Medtronic shall reimburse AVI for all reasonable audit costs incurred for the related audit and Medtronic shall pay for the next succeeding annual audit.

ARTICLE 4
DEVELOPMENT PROJECT

4.1 Development Efforts.

(a) During the Term of this Agreement, Medtronic will control * * * any regulatory and clinical programs for the Drug in the Field as Medtronic deems appropriate (including the clinical trials set forth in Section 3.2) and obtain in * * * name any necessary device or medical regulatory approvals from the FDA, and any applicable regulatory agencies of such other countries as Medtronic deems appropriate, prerequisite to the commercial sale of products for their intended uses. AVI will, at its expense, supply Medtronic with all available documents, instruments, information and reports reasonably necessary or convenient as requested by Medtronic in connection with such regulatory approval efforts and in connection with pre-clinical efforts. During the Term of this Agreement, AVI will, at * * * expense, assist and cooperate with the development of the Drug in the Field, including, without limitation, supplying the Drug to Medtronic and advising and participating in product scientific research and development proceedings and all governmental actions, including filings, proceedings and meetings, as requested by Medtronic. AVI will also assist and cooperate, at * * * expense, with Medtronic in Medtronic's development of coating technology and processes necessary or convenient for the use of the Drug in the Field. In connection with the foregoing and at Medtronic's reasonable request, AVI shall make available senior AVI personnel responsible for and knowledgeable about the Drug and the Technology. AVI grants to Medtronic the right of reference to AVI's regulatory files with the FDA or other appropriate government agencies as necessary or helpful for support of Medtronic's regulatory submissions with respect to the Drug in the Field. AVI hereby acknowledges and agrees that Medtronic shall be entitled to exercise its discretion, taking into account its goals, objectives and priorities, in determining the amount of resources that it will utilize hereunder. All regulatory approvals funded by * * *, and all related studies, documents, instruments, information and reports, will be in * * * name and owned by * * *. Medtronic grants to AVI the right of reference to Medtronic's regulatory files relating to the Drug with the FDA or other appropriate governmental agencies as necessary for support of AVI's current or future regulatory submissions outside the Field; provided that AVI shall not be entitled to utilize such right in connection with any commercialization efforts involving a medical device company. AVI shall provide prior written notice to Medtronic of any exercise of such right of reference specifying the time of such exercise, the type of filing, the regulatory files to be referenced and such other circumstances as may be appropriate for Medtronic to determine AVI's compliance with the exercise of such right. AVI's sole remedy for any breach of Medtronic's obligations under this Section 4.1 shall be as set forth in Section 4.2 or Section 9.2.

(b) AVI shall supply to Medtronic * * * such quantities of the Drug as is reasonably required by Medtronic in connection with pre-clinical and clinical trials and in connection with obtaining regulatory approvals. AVI represents and warrants to Medtronic that all Drugs supplied to Medtronic hereunder will have been manufactured, labeled and packaged in accordance with all applicable laws and regulations, including (as applicable) FDA GMP requirements and all other applicable manufacturing requirements. Medtronic agrees to provide AVI rolling * * * forecasts of Medtronic's requirements for the Drug under this Section 4.1(b), specifying quantities and shipping dates and Medtronic shall update such forecasts at least every * * *. Such rolling forecasts by Medtronic shall be used for purposes of facilitating Medtronic's pre-clinical and clinical plans and meeting the lead times required by AVI, but they are not legally binding on Medtronic.

4.2 * * * Conversion. In the event that the Third Closing Milestone has not occurred on or before * * *, Medtronic Asset Management, Inc. ("MAMI") may indicate in writing (a "Waiver Notice") within seven days thereafter that it is prepared to make the investment specified in Section 2.3 of the Investment Agreement in accordance with the terms of the Investment Agreement as if the Third Closing Milestone had occurred on * * * subject to the satisfaction of any conditions to Medtronic's requirement to make such investment (other than the occurrence of the Third Closing Milestone). If (i) AVI provides written notice of its rejection of such offer contained in the Waiver Notice within seven calendar days after AVI's receipt of such Waiver Notice or (ii) MAMI does not provide a Waiver Notice within seven days after * * *, and, in either of the cases set forth in clause (i) and clause (ii), AVI is not otherwise in material breach of any agreement with Medtronic or an Affiliate of Medtronic, then AVI shall have the right to convert the license granted to Medtronic under Section 2.1 * * *. Notwithstanding the foregoing, if at any time the regulatory process necessary or required to obtain FDA Approval consists of * * * followed by or preceded by * * *, then AVI shall not have the foregoing right and MAMI shall not be required to give the Waiver Notice until * * *. In order to exercise suchright, AVI must provide Medtronic with written notice of such conversion within * * *, as the case may be. Upon the exercise of such option by AVI, the royalty rate in Section 3.3(a) hereof shall be * * * percent (***%) and provided that AVI has royalty rights with respect to sales of Royalty Products hereunder that in the aggregate exceed its royalty obligations with respect to sales of Royalty Products hereunder, the minimum royalty in Section 3.3(b) shall be * * * percent (***%).

4.3 Delays. If: (a) any of Medtronic's activities under Section 4.1 are delayed by an event of Force Majeure (as defined in Section 10.13) or (b) AVI is in material breach of any agreement with Medtronic or an Affiliate of Medtronic, then the applicable * * * date of the Third Milestone under Section 4.2 and the applicable * * * date of the Third Milestone under Section 9.2 shall be extended by a period of time equal to the period of time of the delay caused by the Force Majeure event under Section 4.3(a) above plus the period of time during which AVI is in such breach of such agreements under Section 4.3(b) above.

4.4 Medtronic's Compound Option.

(a) Option. During the Compound Option Period, AVI shall give written notice of its (or its Affiliates') intention to, directly or indirectly, commercialize any Compound that is or may be suitable for use in the Field. Medtronic shall have the right, exercisable at Medtronic's option, to acquire a license, on the terms set forth in Section 4.4(c) below, and to enter into a supply agreement with AVI in accordance with Section 4.4(d) below, with respect to such Compound. AVI shall provide such notice with respect to each such Compound that AVI or its Affiliates intends, directly or indirectly, to commercialize. Medtronic shall have the right during the period ending on the Exclusivity Termination Date with respect to such Compound, to exercise such right by giving written notice thereof to AVI. Within * * * after written notice of such exercise by Medtronic, AVI agrees to enter into the Additional License Agreement and Additional Supply Agreement with Medtronic with respect to such Compound. Such * * * period shall survive the termination of this Agreement. Upon execution and delivery of the Additional License Agreement and Additional Supply Agreement with respect to such Compound, Medtronic shall pay an up-front license fee of * * *.

(b) Exclusivity. Until the Exclusivity Termination Date, AVI shall not directly or indirectly market or sell, or directly or indirectly encourage or solicit the submission of, or entertain inquiries, proposals or offers from any person or entity (other than Medtronic or its Affiliates), or otherwise provide

information to or engage in discussions with any other person or entity, in any way relating to the sale, licensing, distribution or other disposition of any Compound for use or application in the Field or any Intellectual Property relating to the Compound for use or application in the Field.

(c) Additional License Agreement Terms. Unless otherwise mutually agreed in writing by Medtronic and AVI, each license agreement for a Compound (the "Additional License Agreement") shall provide for:

(i) A grant of an exclusive license for the Compound in the Field including an exclusive license to use, market, sell, make and have made, the Compound for the Field, on terms substantially similar to Article 2.

(ii) Control * * * by the Medtronic of all regulatory and clinical programs required for regulatory approval of the Compound for use or application in the Field, on terms substantially similar to Section 4.1.

(iii) In addition to the * * * referenced in Section 4.4(a), the payment of the licensing fees set forth in Section 3.1 and Section 3.2 on terms and conditions substantially similar to those set forth in such Sections and the payment of a royalty of ***% of the net sales of the Compound and any Medtronic device providing for direct application of the Compound subject to reduction for royalties payable to third parties, but to not less than ***%, on terms substantially similar to Section 3.3.

(iv) Such other terms and conditions as are customary for license agreements of this type and as reasonably requested by Medtronic or AVI.

(d) Additional Supply Agreement. Unless otherwise mutually agreed by Medtronic and AVI, each supply agreement for a Compound (the "Additional Supply Agreement") shall provide for:

(i) AVI to produce and supply Medtronic with all of its requirements for the Compound at * * *

(ii) Such other terms and conditions as are customary for supply agreements of this type and as reasonably requested by Medtronic or AVI.

(e) Right of First Refusal. If Medtronic does not exercise its rights under Section 4.4(a) with respect to a Compound during the Compound Option Period, then AVI shall be free to negotiate with third parties with respect to the sale, licensing, distribution or other disposition of the Compound within the Field or any Intellectual Property related to the Compound within the Field, subject to the following rights of Medtronic. If AVI reaches agreement in principle with, or receives a good faith, bona fide offer acceptable to AVI from any third party regarding such sale, licensing, distribution or other disposition, then AVI shall promptly give written notice to Medtronic, which notice shall (i) specify the pricing, terms, conditions and all material provisions with respect to the proposed transaction, (ii) identify the proposed party or parties to such transaction, and (iii) include a copy of any written agreement in principle, letter of intent or other communication setting forth the terms of the proposed transaction between AVI and the proposed third party or parties. Medtronic shall have the irrevocable right and option, exercisable in writing to AVI any time within * * * after Medtronic's receipt of such notice, to elect to enter into such proposed transaction upon the same pricing (or the monetary equivalent of any nonmonetary consideration), terms, conditions and other material provisions as set forth in such notice. Such * * * period shall survive the termination of this Agreement. If Medtronic so elects to exercise its first refusal option, AVI shall use its reasonable best efforts to permit consummation of such proposed transaction with Medtronic within * * * following exercise. If Medtronic fails to exercise its first refusal option to enter into such proposed transaction, AVI and the proposed party identified in such notice may complete such transaction with the third party upon the pricing, terms, conditions and material provisions specified in such notice and contained in the proposed definitive agreement included with such notice; provided that, if (x) AVI and such third party fail to complete such transaction within * * * after the expiration of Medtronic's * * * option, or (y) if any of the pricing, terms, conditions or other material provisions specified in such notice and contained in the proposed definitive agreement are modified so as to be less favorable to AVI, or (z) if the identity of such third party changes, then, in any such event, AVI shall give a new notice to Medtronic, and Medtronic shall have a new first refusal option, with respect to such delayed or modified proposed transaction, in accordance with the foregoing procedure.

(f) Exception to Right of First Refusal. Notwithstanding Section 4.4(e) and for a period of * * * commencing on the Exclusivity Termination Date for a particular Compound, AVI shall have the right to enter into a transaction with a third party involving the sale, licensing or other disposition of such Compound within the Field if the pricing, terms, conditions and all material provisions of such transaction are equal to or more favorable to AVI than those pricing, terms, conditions and material provisions specified in Section 4.4(a), Section 4.4(c) and Section 4.4(d). On the date that is * * * after the Exclusivity Termination Date for a particular Compound, Medtronic's right of first refusal set forth in Section 4.4(e) for such Compound shall be available and in full force and effect with respect to such Compound.

ARTICLE 5
AVI'S OBLIGATIONS

5.1 Maintain Licenses in Force. AVI shall comply with all of the provisions of, and shall maintain in full force and effect, all license agreements with third parties, including, specifically the * * * License, pursuant to which AVI is licensee of Intellectual Property included in the Technology. AVI shall promptly notify Medtronic if any such third party alleges any breach, default, or event that, with the passage of time or giving of notice could become a default, by AVI of any such license agreement. Medtronic shall be entitled, but not obligated, to cure any alleged breach or default by AVI of such license agreement and set-off the cost of such cure against amounts otherwise owed to AVI hereunder.

5.2 Medtronic Exclusivity. AVI will not, without the prior written consent of Medtronic, supply, sell, transfer or otherwise dispose of the Drug or any products or components utilizing the Drug or the Technology or any Joint Invention to any third party if AVI should have known after making reasonable inquiry or has actual knowledge (including the actual knowledge of any of AVI's executive officers) that such third party intends or is likely to use, sell, supply, transfer or otherwise dispose of the Drug or any such products, components, Technology or any Joint Inventions in the Field. Prior to any sale, supply, transfer or other disposition to any third party of the Drug or any products or components utilizing the Drug or any such products, components, Technology or any Joint Invention, AVI shall obtain the agreement of such third party that it will not use, sell, supply, transfer or otherwise dispose of the Drug or any such products, components, Technology or any Joint Inventions in the Field. AVI shall obtain the agreement of such third party that Medtronic will be an express third party beneficiary of such agreement. The restrictions set forth in this Section 5.2 shall not apply to transfers of the Drug to consultants or agents of AVI who are performing research or consulting services on behalf of AVI in connection with such transfer.

5.3 No Amendments to * * * License. AVI agrees not to modify, waive or amend any provision of the * * * License without the prior written consent of Medtronic.

5.4 No Amendments With Adverse Effects to Medtronic. AVI agrees not to modify, waive or amend any provision of any agreement in effect as of the date hereof that would adversely affect Medtronic's obligations under Section 3.3(c) without the prior written consent of Medtronic, including any modification, waiver or amendment to any agreement in effect as of the date hereof that could have the effect of increasing the amount payable to the licensor under * * * as a result of a reduction of (a) the * * * relating to sales of Combined Products or (b) the * * * relating to patents belonging to third parties that, in either case, is in effect as of the date hereof.

5.5 * * * Agreement.

(a) AVI shall not approve the Drug as * * * under the * * * Agreement and shall not otherwise subject the Drug to any of the terms thereof without obtaining the prior written agreement (in form and substance reasonably satisfactory to Medtronic) of * * * that the Drug is subject to Medtronic's rights in the Field hereunder, including but not limited to Medtronic's rights under Section 2.1. AVI shall obtain the written agreement of * * * that Medtronic will be an express third party beneficiary of such agreement.

(b) AVI shall not approve any Compound as * * * under the * * * Agreement and shall not otherwise subject any Compound to any of the terms thereof without obtaining the prior written agreement (in form and substance reasonably satisfactory to Medtronic) of * * * that the Compound is subject to Medtronic's rights in the Field under Section 4.4. AVI shall obtain the written agreement of * * * that Medtronic will be an express third party beneficiary of such agreement.

ARTICLE 6
INTELLECTUAL PROPERTY

6.1 Protect Know-How. AVI and Medtronic agree to maintain the confidentiality of all Confidential Information (as such term is defined in the Investment Agreement), including but not limited to the status of any patent applications included in the Patents. Each party agrees not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder) any Confidential Information of the other party obtained during the term of this Agreement. Each party further agrees to take appropriate measures to prevent any such prohibited disclosure by its present and future employees, officers, agents, subsidiaries, or consultants during the term of this Agreement and shall be liable for any breach of this Article 6 by and such person.

6.2 Protection of Technology. During the term of this Agreement, AVI shall promptly inform Medtronic of any Invention, improvement, amendment, upgrading or modification relating to the Drug or the Technology which may be applicable or useful in the Field. AVI agrees to protect the Technology by obtaining and maintaining appropriate patent rights as recommended by reputable patent counsel; provided, however, that Medtronic shall have the right to review and approve any filings or other correspondence with the appropriate patenting authority relating to the Technology or the Drug in the Field. Medtronic shall not unreasonably withhold such approval. If Medtronic determines, in its sole discretion, that any Technology conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of AVI is not being adequately protected by patents, Medtronic may so inform AVI. If Medtronic decides that AVI's response has been inadequate, Medtronic may take whatever action it deems necessary at its expense to protect such Technology. All patents and copyright registrations shall be applied for in the names of the actual inventors or authors and shall be assigned to AVI, subject to Medtronic's rights and license therein; each party shall execute and deliver such forms of assignment, power of attorney and other documents which are necessary to give effect to the provisions hereof.

6.3 Ownership of Intellectual Property. Subject to the rights and licenses granted to Medtronic by this Agreement, (a) any Intellectual Property conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of AVI shall be the property of AVI, (b) any Intellectual Property conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of Medtronic shall be the property of Medtronic, and (c) AVI and Medtronic shall each have an undivided one-half interest in any Intellectual Property jointly conceived, reduced to practice or otherwise made, developed or acquired by one or more employees or agents of AVI and one or more employees or agents of Medtronic ("Joint Inventions"). For purposes of this Section, Intellectual Property which is the subject of a patent application shall be deemed to have been developed jointly by employees or agents of Medtronic and AVI, and thus be a Joint Invention, if at least one employee or agent of each of Medtronic and AVI is required to be named as an inventor in such application in order for such patent to be valid.

6.4 Prosecution of Patents on Joint Inventions. If either AVI or Medtronic proposes to file an application for any U.S or foreign patents, copyright registration, or any continuation or modification thereof, with respect to any Joint Invention, then such party proposing such registration ("the first party") shall notify the other party ("the second party") in writing and the second party shall have option of joining in such action. If the second party elects to join in such action, the second party shall pay one-half of the total expenses incurred by Medtronic and AVI therein and be entitled to participate in all material steps in such action. If the second party elects not to join in such action, the first party shall be entitled to control such action, but such failure to participate shall not affect the second party's ownership interest in the Joint Inventions or in any Intellectual Property rights therein. Whether or not the second party elects to join in such action, the second party shall, upon the request of the first party, cooperate with and assist the first party in such action to the extent required by statute, regulation or government agency, including without limitation, executing and delivering all documents in connection therewith and using its reasonable efforts to obtain such executions from all appropriate employees and agents of the second party at the second party's cost. Each party will treat Joint Inventions as Confidential Information.

6.5 Prosecution of Infringement of Technology.

(a) Each of Medtronic and AVI shall promptly notify the other if it knows or has reason to believe that any of the rights to the Technology in the Field are being infringed or misappropriated by a third party or that such infringement or misappropriation is threatened. The parties shall consult with each other as promptly as reasonably practicable to review actions to be taken in connection with such alleged infringement or misappropriation. Medtronic shall have the right to institute and control the prosecution of any alleged infringement or misappropriation of the Technology in the Field.

(b) Medtronic shall be solely responsible for payment of all costs and expenses it incurs in the prosecution and/or a negotiation of a settlement. Medtronic shall have the right to act in the name of, or on behalf of AVI, and join AVI as a party plaintiff to any such proceeding if Medtronic believes it is necessary or advisable to successfully prosecute such infringement or misappropriation. AVI shall cooperate in connection with the initiation and prosecution by Medtronic of such suit or action. The proceeds from any judgment, decision or settlement shall first be used to reimburse Medtronic for all costs and expenses it incurred relating to prosecution and settlement of any action; second, be allocated on a * * * basis between Medtronic and AVI until * * *; and finally, the remainder of any proceeds shall accrue to * * *.

(c) If Medtronic fails to initiate the prosecution of any alleged infringement or misappropriation of the Technology in the Field within six (6) months of receiving written notice from AVI of any commercially significant infringement or misappropriation, AVI shall have the right to institute and control the prosecution of any such alleged infringement or misappropriation. AVI shall be solely responsible for the payment of all costs and expenses it incurs

in the prosecution and/or a negotiation of a settlement. AVI shall have the right to act in the name of, or on behalf of Medtronic, and join Medtronic as a party plaintiff to any such proceeding if AVI believes it is necessary or advisable to successfully prosecute such infringement or misappropriation. Medtronic shall cooperate in connection with the initiation and prosecution by AVI of such suit or action. The proceeds from any judgment, decision or settlement shall first be used to reimburse AVI for all costs and expenses it incurred relating to prosecution and settlement of any action; second, be allocated on a * * * basis between Medtronic and AVI until * * * and finally, the remainder of any proceeds shall accrue to * * *.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations of AVI. AVI represents, warrants and covenants to Medtronic that:

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

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

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

(d) AVI exclusively owns, or has valid and subsisting exclusive license rights (with the right to sublicense) to, all of the Technology within the Field, subject to no Lien whatsoever. Other than payment obligations under * * *and under * * * Agreement dated * * * by and between AVI and * * * as amended to the date hereof, AVI is not subject to any obligation to any person or entity for royalties, fees or commissions in respect of the Technology within the Field. No current or former stockholder, employee, officer, agent or consultant of AVI has any rights in or to any of the Technology within the Field. The Technology is valid and enforceable and has not been challenged in any judicial or administrative proceeding and AVI has not received and is not aware of any claim or notice of any person that such person is contemplating such action. AVI's execution and performance of this Agreement, the transactions contemplated herein and Medtronic's use of the Technology within the Field will not infringe, misappropriate, misuse or conflict with the rights, including patent and other Intellectual Property or contractual rights, of third parties. AVI has the right and authority to enter into this Agreement and to grant the license granted herein. To AVI's knowledge, no person or entity nor such person's or entity's business or products has infringed, misused, misappropriated or conflicted with the Technology within the Field or currently is infringing, misusing, misappropriating or conflicting with such Technology within the Field.

(e) There are no actions, suits, claims, disputes or proceedings or governmental investigations pending or, to AVI's knowledge, threatened against AVI or any of its Affiliates with respect to the Technology or the use thereof by AVI, either at law or in equity, before any court or administrative agency or before any governmental department, commission, board, bureau, agency or instrumentality, or before any arbitration board or panel whether located in the United States or a foreign country. AVI has not failed to comply with any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or other governmental department, commission, board, bureau, agency or instrumentality, or before any arbitration board or panel whether located in the United States or a foreign country, which failure in any case would in any material respect impair any rights of Medtronic under this Agreement.

(f) All Patents identified in Exhibit A have the status indicated therein and all applications are still pending in good standing and have not been withdrawn or abandoned. The Patents identified in Exhibit A constitute all of the current patents and patent applications of AVI having applicability to the Technology or the Drug within the Field. AVI has made all statutorily required filings, if any, to record its interest in the Patents.

(g) No representation or warranty made by AVI herein and no information disclosed by AVI to Medtronic contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement made herein or therein not misleading.

(h) The * * * License is in full force and effect and there are no existing defaults, or events, which, with the passage of time or giving of notice, would become defaults thereunder. AVI is the sole and exclusive owner of the licensee's interest in the * * * License, free and clear of any Liens. The execution and delivery by AVI of this Agreement and its performance hereunder will not constitute a default (or an event which, with the passage of time or giving of notice, would constitute a default) under the * * * License. AVI has not received notice, nor is AVI otherwise aware, that the licensor under the * * * License intends to cancel or terminate the * * * License or provide notice of a default (or an event which, with the passage of time or giving of notice, would constitute a default) thereunder. None of the terms of the * * * License has been impaired, waived, altered, amended or modified in any respect (including pursuant to * * * License) prior to the date hereof. AVI has previously delivered to Medtronic a true and correct copy of the * * * License.

(i) AVI has made no public disclosure of any non-patented Technology in the Field and shall make no public disclosure of any such Technology in the Field or any such Technology in the Field which may come into existence during the term of this Agreement, except to the extent required by law or to obtain patent protection therefore. AVI has otherwise taken reasonable steps to protect its rights in the Technology.

(j) As of the date hereof, the genes referred to in the definition of "Drug" set forth in Section 1.1 constitute all of the genes that AVI has researched, developed, tested or otherwise investigated with any antisense compound in connection with or related to * * * and, as of the date hereof, AVI has not identified or selected, and AVI is not otherwise aware of, any other genes (including * * *) with respect to which it has plans to research, develop, test or otherwise investigate with any antisense compound in connection with or related to * * *.

7.2 Representations of Medtronic. Medtronic represents, warrants and covenants to AVI that:

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

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

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

ARTICLE 8
INDEMNIFICATION

8.1 Indemnification by AVI. AVI shall indemnify, defend and hold harmless Medtronic and each of its subsidiaries, officers, directors, shareholder, employees, agents and affiliates (collectively, all such indemnities are referred to in this Section as "Medtronic") against and in respect of any and all claims, demands, losses, obligations, liabilities, damages (and including without limitation, compensatory and punitive damages), deficiencies, actions, settlements, judgments, costs and expenses which Medtronic may incur or suffer or with which it may be faced (including reasonable costs and legal fees incident thereto or in seeking indemnification therefor), (referred to as "Costs") arising out of or based upon the breach by AVI of any of its representations, warranties, covenants or agreements contained or incorporated in this Agreement or any agreement, certificate or document executed and delivered to Medtronic by AVI in connection with the transactions hereunder. An amount for which Medtronic is entitled to indemnification pursuant hereto is referred to as an "Indemnified Amount." During the term of this Agreement, AVI shall maintain, at its expense, a policy of comprehensive general liability insurance sufficient to honor the indemnity made herein, with products liability endorsement, but in no event less than * * * per occurrence and in the annual aggregate. Such policy shall name Medtronic and its Affiliates as additional insureds. AVI shall furnish Medtronic with a certificate of insurance evidencing such coverage within thirty (30) days of the execution of this Agreement, which certificate shall provide for not less than thirty (30) days notice to Medtronic prior to material change in coverage or policy cancellation.

8.2 Indemnification by Medtronic. Medtronic shall indemnify, defend and hold harmless AVI and each of its subsidiaries, officers, directors, shareholder, employees, agents and affiliates (collectively, all such indemnities are referred to in this Section as "AVI") against and in respect of any and all claims, demands, losses, obligations, liabilities, damages (and including without limitation, compensatory and punitive damages), deficiencies, actions, settlements, judgments, costs and expenses which AVI may incur or suffer or with which it may be faced (including reasonable costs and legal fees incident thereto or in seeking indemnification therefor), (referred to as "Costs") arising out of or based upon the breach by Medtronic of any of its representations, warranties, covenants or agreements contained or incorporated in this Agreement or any agreement, certificate or document executed and delivered to AVI by Medtronic in connection with the transactions hereunder. An amount for which AVI is entitled to indemnification pursuant hereto is referred to as an "Indemnified Amount." During the term of this Agreement, Medtronic shall maintain, at its expense, a policy of comprehensive general liability insurance sufficient to honor the indemnity made herein, with products liability endorsement, but in no event less than * * * per occurrence and in the annual aggregate. Such policy shall name AVI and its Affiliates as additional insureds. Medtronic shall furnish AVI with a certificate of insurance (or a self-insurance letter (if Medtronic is self-insured)) evidencing such coverage within thirty (30) days of the execution of this Agreement, which certificate shall provide for not less than thirty (30) days notice to Medtronic prior to material change in coverage or policy cancellation.

8.3 Third Party Claims. If a claim by a third party is made against any indemnified party, and if the indemnified party intends to seek indemnity with respect thereto under this Article 8, such indemnified party shall promptly notify the indemnifying party of such claim; provided, however, that failure to give timely notice shall not affect the rights of the indemnified party so long as the failure to give timely notice does not adversely affect the indemnifying party's ability to defend such claim against a third party. The indemnifying party shall be entitled to settle or assume the defense of such claim, including the employment of counsel reasonably satisfactory to the indemnified party. If the indemnifying party elects to settle or defend such claim, the indemnifying party shall notify the indemnified party within thirty (30) days (but in no event less than twenty (20) days before any pleading, filing or response on behalf of the indemnified party is due) of the indemnifying party's intent to do so. If the indemnifying party elects not to settle or defend such claim or fails to notify the indemnified party of the election within thirty (30) days (or such shorter period provided above) after receipt of the indemnified party's notice of a claim of indemnity hereunder, the indemnified party shall have the right to contest, settle or compromise the claim without prejudice to any rights to indemnification hereunder. Regardless of which party is controlling the settlement of defense of any claim, (a) both the indemnified party and indemnifying party shall act in good faith, (b) the indemnifying party shall not thereby permit to exist any Lien, encumbrance or other adverse charge upon any asset of any indemnified party or of its subsidiaries, (c) the indemnifying party shall permit the indemnified party to participate in such settlement or defense through counsel chosen by the indemnified party, with all fees, costs and expenses of such counsel borne by the indemnified party, (d) no entry of judgment or settlement of a claim may be agreed to without the written consent of the indemnified party, and (e) the indemnifying party shall promptly reimburse the indemnified party for the full amount of such claim and the related expenses as incurred by the indemnified party pursuant to this Article 8. So long as the indemnifying party is reasonably contesting any such third party claim in good faith and the foregoing clause (b) is being complied with, the indemnified party shall not pay or settle any such claim. The controlling party shall upon request deliver, or cause to be delivered, to the other party copies of all correspondence, pleadings, motions, briefs, appeals or other written statements relating to or submitted in connection with the settlement or defense of any such claim, and timely notices of any hearing or other court proceeding relating to such claim.

8.4 Set-Off. In the event Medtronic is entitled to indemnification under this Article 8, Medtronic shall be entitled in its discretion, without limitation of any other rights or remedies of Medtronic, to set-off all or any part of the Indemnified Amount against any amounts which are then owed or thereafter become owed by Medtronic to AVI. Medtronic shall be entitled to set-off an Indemnified Amount when such Costs are threatened, whether or not yet incurred and whether or not the amount thereof has been finally determined. If Medtronic defers payment of any amount to AVI past the scheduled payment date because there exists a pending indemnification claim by Medtronic pursuant to this Article the amount of which has not then been finally determined, the excess, if any, of such deferred amount over the finally determined amount of the indemnification claim shall be promptly paid upon such final determination, together with simple interest at the rate of eight percent (8%) per annum on such excess accrued from the originally scheduled payment date for such deferred amount.

ARTICLE 9
TERM AND TERMINATION

9.1 Term of License. Unless otherwise terminated under provisions of Section 9.2, this Agreement and the license granted under Section 2.1 shall continue until * * *, at which time the license rights of Medtronic set forth in Section 2.1 shall be deemed to be converted, into a fully paid, exclusive, worldwide, irrevocable, sublicensable, royalty-free license of the Technology to make, have made, use, import, export, distribute, sell, offer to sell and have sold

the Drug in the Field and products incorporating or utilizing the Drug and/or the Technology in the Field, practice methods covered thereby, and otherwise to commercialize and exploit, the Drug and/or the Technology in the Field ("Term").

9.2 Termination. (a) If either party is in material breach of the terms, conditions or agreements of this Agreement, then the other party may terminate this Agreement, at its option and without prejudice to any of its other legal and equitable rights and remedies, by giving the breaching party * * * notice in writing, particularly specifying the breach. Such notice of termination shall not be effective if the breaching party cures the specified breach within such * * * period. Each party shall have the right to suspend payment of any amount due to the other hereunder during the time that the breach of the other party remains uncured.

(b) In the event that the Third Closing Milestone has not occurred on or before * * *, Medtronic Asset Management, Inc. ("MAMI") may indicate in writing (a "Waiver Notice") within seven days thereafter that it is prepared to make the investment specified in Section 2.3 of the Investment Agreement in accordance with the terms of the Investment Agreement as if the Third Closing Milestone had occurred * * * subject to the satisfaction of any conditions to Medtronic's requirement to make such investment (other than the occurrence of the Third Closing Milestone). If (i) AVI provides written notice of its rejection of such offer contained in the Waiver Notice within seven calendar days after AVI's receipt of such Waiver Notice or (ii) MAMI does not provide a Waiver Notice within seven days after * * *, and, in either of the cases set forth in clause (i) and clause (ii), AVI is not otherwise in material breach of any agreement with Medtronic or an Affiliate of Medtronic, then AVI shall have the right to terminate this Agreement. Notwithstanding the foregoing, if at any time the regulatory process necessary or required to obtain FDA Approval as determined by Medtronic consists of * * * followed by or preceded by * * * and Medtronic has not abandoned the process of seeking regulatory approval on and as of * * *, then AVI shall not have the foregoing right and MAMI shall not be required to give the Waiver Notice until * * *. In order to exercise such termination right, AVI must provide Medtronic with written notice of such termination within thirty (30) days * * *, as the case may be.

(c) If on * * *, cumulative Net Sales of Royalty Products by Medtronic are * * *, AVI shall have the right to terminate this Agreement by providing written notice to Medtronic of such termination within thirty (30) days after such date.

9.3 Effect of Termination.

(a) In the event of termination of this Agreement, Medtronic shall be entitled to complete all work-in-process and sell its remaining inventory of Royalty Products, subject to the payment of royalties pursuant to Section 3.3 on such Net Sales.

(b) Upon termination of this Agreement, each party will within thirty (30) days return to the other all tangible Confidential Information of the other party (except one copy which may be retained by legal counsel solely for evidentiary purposes in the event of a dispute), and each party will deliver to the other a copy of any documentation in its possession or control specifically relating to the Joint Inventions.

(c) In the event of termination of the * * * License pursuant to * * *, the license granted hereunder, to the extent it constitutes a sub-license under the * * * License, shall, at the option of Medtronic, convert to a license directly between Medtronic and * * * pursuant to, and subject to the satisfaction of the conditions to such conversion set forth in, * * * License. AVI shall assist Medtronic (as Medtronic may reasonably request) in exercising its rights under this Section 9.3(c) and satisfying the conditions to such conversion. Any such conversion shall not have any effect on the license granted hereunder to the extent it does not constitute a sub-license under the * * * License.

ARTICLE 10
MISCELLANEOUS

10.1 Further Assurances. Each party agrees to execute and deliver without further consideration any further applications, licenses, assignments or other documents, and to perform such other lawful acts as the other party may reasonably request to fully secure and/or evidence the rights or interests herein.

10.2 Complete Agreement. This Agreement (including all schedules and exhibits hereto and thereto) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein, with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

10.3 Survival of Representations, Warranties and Agreements. The representations, warranties, covenants and agreements contained in Articles 6 and 8 of this Agreement shall survive termination of this Agreement and remain in full force and effect. No independent investigation of AVI by Medtronic, its counsel, or any of its agents or employees shall in any way limit or restrict the scope of the representations and warranties made by AVI in this Agreement.

10.4 Waiver, Discharge, Amendment, Etc. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not, absent an express written waiver signed by the party making such waiver specifying the provision being waived, be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of the party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Any amendment to this Agreement shall be in writing and signed by AVI and Medtronic.

10.5 Notices. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by telecopy (receipt confirmed) to an executive officer of such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to Medtronic:

Medtronic, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to AVI:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258

Attn: President, Alan P. Timmins

With a copy to:

HURLEY, LYNCH & RE, P.C.
747 SW Industrial Way
Bend, Oregon 97702
Attn: Robert A. Stout, Esq.

Any party may change the above-specified recipient and/or mailing address by notice to the other party given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by telecopy) or on the day shown on the return receipt (if delivered by mail or delivery service).

10.6 Public Announcement. In the event any party proposes to issue any press release or public announcement concerning any provisions of this Agreement or the transactions contemplated hereby, such party shall so advise the other party hereto, and the parties shall thereafter use their best efforts to cause a mutually agreeable release or announcement to be issued. Neither party will publicly or privately disclose or divulge any provisions of this Agreement or the transactions contemplated hereby without the other parties' written consent, except as may be required by applicable law, rule, regulation, order or stock exchange regulation, and except for communications to employees; provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information. In particular, prior to such disclosure, each party shall use its best efforts to redact the royalty rates and payment terms specified herein and each party shall provide the other the opportunity to redact other information and seek confidential treatment of any such disclosure.

10.7 Expenses. AVI and Medtronic shall each pay their own expenses incident to this Agreement and the preparation for, and consummation of, the transactions provided for herein.

10.8 Governing Law. The formation, legality, validity, enforceability and interpretation of this Agreement shall be governed by the laws of the State of Minnesota, without giving effect to the principles of conflict of laws; provided, however, that nothing in Minnesota procedural law shall be deemed to alter or affect the applicability of the rules of the Federal Arbitration Act as governing arbitration of disputes as provided in Section 10.12 and, provided further, that no Minnesota laws or rules of arbitration shall be applicable. Subject to Section 10.12 hereof, the parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in the county in which arbitration is conducted with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby, and irrevocably consent to the exclusive jurisdiction and venue of such courts and waive any objections they may have at any time to such exclusive jurisdiction and venue.

10.9 Titles and Headings; Construction. The titles and headings to the Articles and Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

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

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed as original and all of which together shall constitute one instrument.

10.12 Arbitration. Any dispute arising out of or relating to this Agreement or the Registration Rights Agreement, including the formation, interpretation or alleged breach hereof, shall be settled in accordance with the Exhibit **C** attached hereto. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

10.13 Force Majeure. Neither party shall be in default because of any failure to perform this Agreement if such failure arises from causes beyond the control of such party ("the first party") and without the fault or negligence of such first party, including without limitation, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather. In each instance, the failure to perform must be beyond the reasonable control and without the fault or negligence of the first party. If it appears that performance under this Agreement may be delayed by an event of Force Majeure, the first party will immediately notify the other party as soon as practicable in writing at the address specified in this Agreement. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

10.14 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors or assigns of the parties hereto; provided, that (i) the rights and obligations of AVI herein may not be assigned except to any person who succeeds to substantially all of AVI's business, and (ii) the rights and obligations of Medtronic herein may not be assigned except to an Affiliate or any person who succeeds to all or a substantial portion of Medtronic's business to which this Agreement relates. Any attempted assignment of this Agreement in violation of this Section 10.14 shall be null and void.

10.15 * * *License. Medtronic agrees to be bound by the provisions of * * * (copies of which are attached hereto as Exhibit D) of the * * * License as if Medtronic were a party to the * * * License.

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

AVI BioPharma, Inc.

/s/ Denis Burger

By: Denis Burger

Its: CEO

Medtronic, Inc.

/s/ Michael D. Ellwein

By: Michael D. Ellwein

Its: VP

EXHIBIT A

Insert identification of patents and patent applications

U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
U.S. Patent Number * * *
International Publication Number * * *

EXHIBIT B

List of Genes referenced in definition of "Drug"

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In addition, any other genes that breach AVI's representation and warranty set forth in Section 7.1(j) shall be deemed to be listed on this Exhibit B

Exhibit C

Arbitration Procedures

1) Negotiations. If any dispute arises between AVI and Medtronic with respect to the Supply Agreement or the License and Development Agreement (the "Agreements"), or any alleged breach thereof, any party may, by written notice to the other party, have such dispute referred to their respective designees listed below or their successors for attempted resolution by good faith negotiations within 30 days after such notice is received. Such designees are as follows:

For AVI - the President of AVI or his/her designee

For Medtronic - the President of Medtronic, Inc.'s business unit to which the Agreements relate, or his/her designee

Any settlement reached by the parties under this Section 1 shall not be binding until reduced to writing and signed by the above-specified designees of Medtronic and AVI. When reduced to writing, such settlement agreement shall supersede all other agreements, written or oral, to the extent such agreements specifically pertain to the matters so settled. If the designees are unable to resolve such dispute within such 30-day period, any party may invoke the provisions of Section 2 below.

2) Arbitration. All claims, disputes, controversies, and other matters in question arising out of or relating to the Agreements, including claims for Indemnifiable Losses and disputes regarding the making of the Agreements, including claims of fraud in the inducement, or to the alleged breach hereof, shall be settled by negotiation between the parties as described in Section 1 above or, if negotiation is unsuccessful, by binding arbitration in accordance with procedures set forth in Section 3 and 4 below.

3) Notice. Notice of demand for binding arbitration shall be given in writing to the other party and shall be delivered personally or by facsimile (receipt confirmed) to an executive officer of such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

Medtronic Asset Management, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to AVI to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President, Alan P. Timmins

With a copy to:

Hurley, Lynch & Re, PC
747 SW Industrial Way
Bend, OR 97702
Attn: Robert A. Stout, Esq.

Any party may change the above–specified recipient and/or mailing address by notice to the other party given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by facsimile (upon appropriate electronic confirmation of successful transmission)) or on the day shown on the return receipt (if delivered by mail or delivery service). In no event may a notice of demand of any kind be filed more than two years after the date the claim, dispute, controversy, or other matter in question was asserted by one party against another, and if such demand is not timely filed, the claim, dispute, controversy, or other matter in question referenced in the demand shall be deemed released, waived, barred, and unenforceable for all time, and barred as if by statute of limitations.

4) Binding Arbitration. Upon filing of a notice of demand for binding arbitration by any party hereto, arbitration shall be commenced and conducted as follows:

(a) Arbitrators. All claims, disputes, controversies, and other matters (collectively "matters") in question shall be referred to and decided and settled by a standing panel of three independent arbitrators, one selected by each of AVI and Medtronic's representative and the third by the two arbitrators so selected; provided, if the amount in controversy (including reasonably anticipated future amounts or payments under the Agreement affected by such arbitrated matter) is under $300,000, a single arbitrator will be used. The third (or the single arbitrator, if applicable) shall be a former judge of one of the U.S. District Courts or one of the U.S. Court of Appeals or such other classes of persons as the parties may agree. Selection of arbitrators shall be made within 30 days after the date of the first notice of demand given pursuant to Section 3 and within 30 days after any resignation, disability or other removal of such arbitrator. Following appointment, each arbitrator shall remain a member of the standing panel, subject to removal for just cause or resignation or disability; provided, however, an arbitrator can be removed by the party who appointed the arbitrator, or in the case of the third arbitrator, by either party for any reason at any time when no matter is in arbitration.

(b) Cost of Arbitration. The cost of each arbitration proceeding, including without limitation the arbitrators' compensation and expenses, hearing room charges, court reporter transcript charges etc., shall be borne by the party whom the arbitrators determine has not prevailed in such proceeding, or borne equally by the parties if the arbitrators determine that neither party has prevailed. The arbitrators shall also award the party that

prevails substantially in its pre-hearing position its reasonable attorneys' fees and costs incurred in connection with the arbitration. The arbitrators are specifically instructed to award attorneys' fees for instances of abuse of the discovery process.

(c) Location of Proceedings. An arbitration proceeding initiated by AVI shall be held in Hennepin County, Minnesota and an arbitration proceeding initiated by Medtronic shall be held in Multnomah County, Oregon, unless the parties agree otherwise.

(d) Pre-hearing Discovery. The parties shall have the right to conduct and enforce pre-hearing discovery in accordance with the then current Federal Rules of Civil Procedure, subject to these limitations: Document discovery and other discovery shall be under the control of and enforceable by the arbitrators. The arbitrators shall permit and facilitate such other discovery as they shall determine is appropriate under the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective. The arbitrators shall decide discovery disputes. The arbitrators are empowered:

(i) to issue subpoenas to compel pre-hearing document or deposition discovery;

(ii) to enforce the discovery rights and obligations of the parties; and

(iii) to otherwise control the scheduling and conduct of the proceedings.

Notwithstanding any contrary foregoing provisions, the arbitrators shall have the power and authority to, and to the fullest extent practicable shall, abbreviate arbitration discovery in a manner that is fair to all parties in order to expedite the arbitration proceeding and render a final decision within six months after the pre-hearing conference.

(e) Pre-hearing Conference. Within 45 days after filing of notice of demand for binding arbitration, the arbitrators shall hold a pre-hearing conference to establish schedules for completion of discovery, for exchange of exhibit and witness lists, for arbitration briefs, for the hearing, and to decide procedural matters and all other questions that may be presented.

(f) Hearing Procedures. The hearing shall be conducted to preserve its privacy and to allow reasonable procedural due process. Rules of evidence need not be strictly followed, and the hearing shall be streamlined as follows:

(i) Documents shall be self-authenticating, subject to valid objection by the opposing party;

(ii) Expert reports, witness biographies, depositions, and affidavits may be utilized, subject to the opponent's right of a live cross-examination of the witness in person;

(iii) Charts, graphs, and summaries shall be utilized to present voluminous data, provided (i) that the underlying data was made available to the opposing party 30 days prior to the hearing, and (ii) that the preparer of each chart, graph, or summary is available for explanation and live cross-examination in person;

(iv) The hearing should be held on consecutive business days without interruption to the maximum extent practicable; and

(v) The arbitrators shall establish all other procedural rules for the conduct of the arbitration in accordance with the rules of arbitration of the Center for Public Resources.

(g) Governing Law. This arbitration provision shall be governed by, and all rights and obligations specifically enforceable under and pursuant to, the rules of the Federal Arbitration Act and the laws of the State of Minnesota shall be applied, without reference to the choice of law principles thereof, in resolving matters submitted to such arbitration.

(h) Consolidation. No arbitration shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement (other than affiliates of any such party, which affiliates may be included in the arbitration), except by written consent of the parties hereto containing a specific reference to this Agreement.

(i) Award. The arbitrators shall be required to render their final decision within six months after the pre-hearing conference. The arbitrators are empowered to render an award of general compensatory damages and equitable relief (including, without limitation, injunctive relief), but are not empowered to award punitive or presumptive damages. The award rendered by the arbitrators (1) shall be final; (2) shall not constitute a basis for collateral estoppel as to any issue; and (3) shall not be subject to vacation or modification, except in the event of fraud or gross misconduct on the part of the arbitrators.

(j) Confidentiality. The parties hereto will maintain the substance of any proceedings hereunder in confidence and make disclosures to others only to the extent necessary to properly conduct the proceedings.

Exhibit D

Paragraphs * * * of the * * * License

SUPPLY AGREEMENT [1]

THIS SUPPLY AGREEMENT (the "Agreement") is made and entered into as of June 20, 2001, (the "Effective Date") between AVI BIOPHARMA, INC. (as defined below, "Supplier"), an Oregon corporation, and MEDTRONIC, INC. (as defined below, "Medtronic"), a Minnesota corporation.

WITNESSETH:

WHEREAS, Supplier is establishing manufacturing facilities to manufacture drugs such as the Drug (as defined below);

WHEREAS, Medtronic and Supplier have entered into a License and Development Agreement of even date herewith with respect to the Drug (the "License and Development Agreement");

WHEREAS, Supplier and Medtronic wish to enter into this Agreement regarding Supplier's supplying the Product (as defined below) to Medtronic; and

AGREEMENTS:

NOW THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Affiliate" of a specified person (natural or juridical) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

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

"Confidential Information" means know-how, trade secrets, and unpublished information disclosed (whether before or during the term of this Agreement) by one of the parties (the "disclosing party") to the other party (the "receiving party") or generated under this Agreement, excluding information which:

[1] Information was omitted from this document pursuant to a request for confidential treatment submitted to the SEC; omitted information is marked with ***. The omitted material has been filed separately with the SEC.

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

(b) is or becomes part of the public domain by reason of acts not attributable to the receiving party;

(c) is or becomes available to receiving party from a source other than the disclosing party which source, has rightfully obtained such information and has no obligation of non-disclosure or confidentiality to the disclosing party with respect thereto; or

(d) has been independently developed by the receiving party without breach of this Agreement or use of any Confidential Information of the other party.

"Drug" has the meaning given such term in the License and Development Agreement.

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

"Force Majeure" means any event or condition, not existing as of the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder, such as an act of government, war or related actions, civil insurrection, riot, sabotage, strike, epidemic, fire, flood, windstorm, and similar events.

"GMP" means Good Manufacturing Practices as defined in 21 CFR Parts 210 through 226 and Parts 600 through 680 and any successor provisions thereof that apply to production of the Drug under this Agreement.

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

"Manufacturing Cost" means * * *

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

"Product" means the Drug.

"Product Liability Damages" means any liability, claim or expense, including but not limited to reasonable attorneys' fees and medical expenses, arising in whole or in part out of claims of third parties for personal injury or loss of or damage to property relating to or arising out of the Products, whether based on strict liability in tort, negligent manufacture of product, or any other allegation of liability arising from the design, testing, manufacture, packaging, labeling (including instructions for use), or sale of the Products.

"Specifications" means the specifications and formulations for the Products as set forth on **Exhibit A**, as may be amended from time to time upon mutual agreement of the parties with respect to the Product. Specifications specifically developed by Medtronic or included in any FDA approval of the Drug, but excluding in either case Supplier Specifications (as defined herein), shall be referred to as "Medtronic Specifications." "Supplier Specifications" shall mean specifications developed by Supplier and incorporated into the Specifications without modification by Medtronic.

"Supplier" means AVI BioPharma, Inc. and its Affiliates.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and shall have the meaning indicated throughout this Agreement.

1.3 Definitional Provisions.

(a) The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) References to an "Exhibit" or to a "Schedule" are, unless otherwise specified, to one of the Exhibits or Schedules attached to or referenced in this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

(d) The term "person" includes any individual, partnership, joint venture, corporation, trust, unincorporated organization or government or any department or agency thereof.

ARTICLE 2
SUPPLY

2.1 Supply of Products. Commencing upon the first regulatory approval of the commercial sale of the Product, Supplier shall manufacture, or have manufactured, and supply to Medtronic all of Medtronic's orders for Products made under Article 3, in accordance with the Specifications in effect at the time of order for each Product and with Medtronic's schedule for deliveries. In the event of any Product or material shortages or temporary or long-term production capacity restraints or Force Majeure events, Supplier may allocate production capacity among customers, but, in all events will supply Medtronic on a priority basis over supplying any other customers.

2.2 Promotion and Training. Upon a reasonable request by Medtronic and subject to staff and support availability, Supplier will assist Medtronic in preparing promotional, marketing and training literature and instructions for the Products, including any artwork, will conduct training courses and seminars to educate medical professionals on the use of Products and their use in connection with Medtronic's medical devices and for training its marketing, sales, and distribution groups, and will provide Medtronic with training related to the sale of Products. Medtronic shall reimburse Supplier for travel and other out-of-pocket costs reasonably incurred by Supplier in connection with such training upon submission by Supplier of appropriate documentation thereof.

2.3 Packaging and Labeling. Supplier shall package and label the Products in accordance with packaging and labeling specifications to be mutually agreed upon by Medtronic and Supplier and approved by the FDA.

2.4 Compliance With Laws and Regulations.

(a) Supplier shall be responsible for compliance with present and future applicable statutes, laws, ordinances and regulations of national, federal, state and local governments now or hereafter in effect materially relating to its manufacture of the Products. If required or necessary in connection with sales of Products by Medtronic, Supplier shall have its manufacturing facilities become ISO 9001 certified. Without limitation of the foregoing, Supplier represents and warrants to Medtronic that all Products sold and delivered to Medtronic under this Agreement will have been manufactured, labeled and packaged in accordance with applicable FDA GMP requirements and, if applicable, Supplier's ISO 9001 certifications, and that continually during the term of this Agreement no Products delivered by Supplier to Medtronic shall be adulterated or misbranded at the time of delivery within the meaning of the U.S. Food, Drug and Cosmetic Act and regulations thereunder or any similar law or regulation. Supplier shall cause Medtronic's regulatory personnel to be provided with reasonable access from time to time to the facilities and records of Supplier for the purpose of confirming Supplier's compliance with any applicable FDA GMP and all other applicable requirements noted in this Article 2. Supplier agrees to provide Medtronic with reasonable prior written notice of any FDA inspection of Supplier's facilities or records prior to such FDA inspection, or if such prior written notice is not feasible, then within three business days thereafter. Supplier also agrees to provide Medtronic with written notice of its receipt of any claim by the FDA or other governmental agency of any actual or alleged violation by Supplier of any GMP or other applicable requirements as soon as practicable following receipt of such notice (but in no event more than 5 business days thereafter). Medtronic shall have the right, at any time and from time-to-time upon not less than 72 hours prior notice to the Supplier, to inspect Supplier's manufacturing facilities in order to examine all phases of the manufacturing process and inspect or audit any or all of the Supplier's data and records related thereto and the Products compliance with the terms and conditions hereunder or with respect to any applicable law, rule or regulation. In the event Supplier uses a sub-contractor or third party to perform any part of the manufacturing, Supplier shall obtain the agreement of such sub-contractor or third party that Medtronic shall have similar inspection rights.

(b) Medtronic and Supplier (except where Supplier has the responsibility under Section 2.4(a) or elsewhere herein) shall comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, local and municipal government agencies which affect their respective performance and activities under this Agreement. Notwithstanding anything contained herein, Medtronic shall be responsible for compliance with present and future applicable statutes, laws, ordinances and regulations of national, federal, state and local governments now or hereafter in effect including applicable import and export laws materially relating to its purchase, distribution or sale of the Products.

2.5 Exclusivity. During the term of this Agreement, or if longer, the term of the License and Development Agreement, Supplier shall not promote, market or sell the Drug for use in the Field (as defined in the License and Development Agreement). Prior to any sale, transfer or other disposition to any third

party of the Drug, Supplier shall obtain the agreement of such third party that it will not use, promote, market or sell the Drug in the Field or resell the Drug for use in the Field. Supplier shall obtain the agreement of such third party that Medtronic will be an express third party beneficiary of such agreement.

2.6 Complaints and Adverse Events. Each party agrees to inform the other party promptly (but in no event no later than forty-eight (48) hours after becoming aware of same) of any information concerning any complaint involving the Products or that might be applicable to the Products or adverse drug experience (as defined in 21 C.F.R. § 314.80), injury, toxicity, or sensitivity reaction associated with the use of the Products or that might be applicable to the Products, provided that:

(a) if the adverse drug experience is serious, as defined in 21 C.F.R. § 314.80 (including any adverse drug reaction that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer or overdose), then each party shall notify the other party within twenty-four (24) hours;

(b) all notifications to Medtronic shall be by facsimile and on Medtronic's designated adverse event forms; and

(c) all notifications to Supplier shall be by facsimile and on Supplier's designated adverse event forms.

2.7 Records and Recall. Medtronic shall maintain complete and accurate records of all Products sold by Medtronic in sufficient detail to enable Supplier to conduct an effective recall of Products purchased by Medtronic under this Agreement if Supplier determines that such a recall is required or otherwise necessary or appropriate. In the event of a recall of any of the Products by Supplier, Medtronic will cooperate with and assist Supplier in effecting such recall, including promptly contacting any purchasers that Supplier reasonably desires to be contacted and promptly communicating to such purchasers the information or instructions Supplier reasonably desires to be transmitted relating to such recall. Medtronic shall be responsible for all costs of effecting such recall of Products, including any shipping costs related to returning recalled Products to Supplier and replacing such recalled Products with new Products, except, such costs shall instead be paid by Supplier (directly or through reimbursement of Medtronic for costs reasonably incurred by Medtronic) where the recall relates to a matter for which Supplier would be required to indemnify Medtronic under Article 7 of this Agreement. Notwithstanding the foregoing, Medtronic shall control any recall of any products sold by Medtronic to third parties that may incorporate the Product.

2.8 Certain Responsibilities. Notwithstanding anything contained herein, Supplier shall not be responsible for any loss or damage, including Products Liability Damages, from the use or performance of the Products manufactured under this Agreement where (a) such use or performance did not result from a breach of this Agreement by Supplier, including, without limitation, Supplier's warranties, (b) the Products complied with the description and form described in any documents used for all governmental approvals, applications, submissions, and approvals filed by Medtronic with the FDA, or given to Medtronic by the FDA,and (c) the Products complied with the packaging, shipping, and labeling for the Products. Medtronic further agrees that no Products will be released for public use or consumption until all requisite governmental approvals therefore have been obtained for such use and consumption.

2.9 * * * Supply. Supplier agrees to have in place prior to the first regulatory approval of the commercial sale of the Product and maintain during the term of this Agreement * * * supply for the Drug (in addition to and independent of * * *) * * * to produce commercially reasonable quantities of the Drug in compliance with FDA GMP requirements and other regulatory requirements. Supplier agrees to store in a safe and secure off-site location a * * * supply of the Product (based upon Medtronic forecasts delivered pursuant to Section 3.1) and Supplier agrees to exercise commercially reasonable efforts to replenish such supply if it is used. The Products shall be stored in compliance with the Specifications and any applicable law or regulation.

ARTICLE 3
FORECASTS, ORDERS AND DELIVERY

3.1 Forecasts. Medtronic agrees to provide Supplier, to the extent practicable, at least * * * prior to the date of anticipated first commercial release of the Product, a rolling * * * forecast of Medtronic's purchase of such Product from Supplier, specifying quantities and shipping dates. Such forecast shall be updated by Medtronic on a * * * basis which updated forecast must be received by Supplier no later than * * * prior to the first day of each succeeding * * * period. Such rolling forecasts by Medtronic shall be used for purposes of facilitating Medtronic's clinical, sales and marketing plans and meeting the lead times required by certain of Supplier's suppliers, but they are not legally binding on Medtronic in any manner.

3.2 Purchase Orders. Medtronic shall submit purchase orders for the Products to Supplier in writing, whether by mail, facsimile, email or otherwise, which shall, at a minimum, set forth the product numbers, quantities, delivery dates, and shipping instructions and shipping addresses for all Products ordered. Each purchase order shall give rise to a contract between Medtronic and Supplier for the sale of the Products ordered and shall be subject to and governed by the terms of this Agreement. The terms and conditions of this Agreement shall so govern and supersede any additional or contrary terms set forth in Medtronic's purchase order or any Supplier or Medtronic acceptance, confirmation, invoice or other document unless duly signed by an officer of Medtronic and an executive officer of Supplier and expressly stating and identifying which specific additional or contrary terms shall supersede the terms and conditions of this Agreement. With respect to all purchase orders submitted at least * * * in advance of the earliest scheduled delivery date set forth in such order, Supplier shall fill such orders in accordance with the scheduled delivery dates set forth therein , and with respect to all other purchase orders, Supplier shall exercise commercially reasonable efforts to fill such orders in accordance with the scheduled delivery dates set forth therein .

3.3 Modification of Orders. No purchase order shall be modified or canceled except upon the mutual agreement of the parties; provided, however, that Medtronic may cancel a purchase order based upon actions of a regulatory authority and Medtronic may make changes to a purchase order in quantities that do not exceed * * * of such outstanding order, provided that Medtronic will reimburse for costs incurred on any such cancelled orders to the extent Supplier is not able, after reasonable effort, to recover its costs in connection therewith. Mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the change order so states. Notwithstanding the foregoing, any purchase order may be cancelled by Medtronic, without any liability to Medtronic, as to any Product that is not delivered within * * * after the delivery date requested by Medtronic, and any such cancellation shall not limit or affect any contract remedies available to Medtronic with respect thereto. Any such cancellation by Medtronic must be by written notice to Supplier given within * * * business days after * * * day.

3.4 Delivery Terms. All deliveries of Products shall be F.O.B. Supplier's manufacturing facility. Supplier shall have no further responsibility for risk of damage to or loss or delay of Products upon delivery by Supplier at the F.O.B. location to the common carrier specified by Medtronic or, in the event that no carrier shall have been specified by Medtronic on or before the date fifteen (15) days prior to the requested shipment date, a common carrier reasonably selected by Supplier. Medtronic shall be responsible for all shipping, handling, and insurance costs.

3.5 Product Changes. Supplier shall not, without Medtronic's prior written consent, materially alter the Specifications for Products. Supplier shall not, without Medtronic's prior written consent, modify the manufacturing processes, methods or procedures for the Product in any manner that increases the Manufacturing Costs. Such consent will not be unreasonably withheld by Medtronic if specifications, processes, methods, or procedures must be changed based upon demands by regulatory authority or changes in applicable law.

ARTICLE 4
PRICES AND PAYMENTS

4.1 Prices.

(a) Unless and until otherwise mutually agreed by the parties in writing, the purchase priceforProductmanufactured by Supplier for Medtronic under this Agreement (the "Transfer Price") shall be determined under the definition of "Manufacturing Cost" and Exhibit B.

(b) If Supplier subcontracts for the manufacturing of the Product, Manufacturing Cost shall be determined based on * * *.

4.2 Payment Terms. Payments made by Medtronic for Products purchased hereunder shall be due and payable in full within * * * after the date of invoice by Supplier.

4.3 * * *

ARTICLE 5
WARRANTY AND SERVICE

5.1 Warranty.

(a) Supplier represents and warrants to Medtronic that all Products sold under this Agreement will have been manufactured, labeled and packaged in accordance with all applicable laws and regulations, including (as applicable) FDA GMP requirements and, if applicable, ISO 9001 certifications, or successor requirements, and all other applicable manufacturing requirements, as well as the Specifications. Supplier represents, warrants and covenants that it will have, or will contract for, the facilities, equipment, licenses, permits and personnel to manufacture and supply the Product in accordance with the current expected requirements of Medtronic.

(b) Supplier represents and warrants to Medtronic that Products shall, when delivered to Medtronic, meet the Specifications and warranties set forth herein and shall be free from defects in materials and workmanship. Medtronic shall invoice Supplier for, and Supplier shall promptly pay, all shipping, transportation, insurance and other expenses actually incurred in replacing defective Products where either the defect arises from a breach of any representation or warranty of Supplier herein or from a matter for which Supplier would be required to indemnify Medtronic hereunder. Supplier will, at Medtronic's option, replace or credit Medtronic's account for any Product that Medtronic reasonably determines was defective at the time of shipment to Medtronic or that does not conform to the express warranties of Supplier herein; provided, however, that Supplier shall have no obligation under this warranty to make replacements or grant credits necessitated in whole or in part by accidents; failure to maintain in accordance with any transportation, storage, handling, or maintenance, instructions supplied by Supplier; damage due to Medtronic Specifications where Supplier followed such specifications and the damage was due to defects in such Medtronic Specifications; where Medtronic is specifically liablefor such damages or defect under the terms of Article 7; damage by acts of nature, vandalism, burglary neglect or misuse; or other fault or negligence of Medtronic or (except for any strict liability of Supplier) the customer or user (collectively, "Warranty Exclusions").

5.2 Limited Warranty. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY SPECIFICALLY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

5.3 Inspection of Product. In the event of any shortage, damage or discrepancy in or to a shipment of Products or in the event any of the Products fail to comply with the then current Specifications (excluding Warranty Exclusions) or Supplier warranties for the Products, Medtronic shall report the same to Supplier within * * * after delivery thereof to Medtronic and, if requested in writing by Supplier, furnish such written evidence or other documentation as Supplier reasonably may deem appropriate in connection therewith. In any such event, or if the Products are not delivered within the time periods required, Medtronic may reject the Product and return the Products to Supplier, at Supplier's expense (including handling, insurance and shipping charges), unless the Products' defect results from matters that are Medtronic's responsibility under Article 7 or constitute Warranty Exclusions. Any Products not rejected by Medtronic by written notice given to Supplier within such * * * period shall be deemed to have been accepted by Medtronic. Following any such acceptance, the sole remedies of Medtronic with respect to damage to or defects in the Products shall be those set forth in Sections 5.1 and 7.1. Medtronic shall not be obligated to conduct any tests or inspections of the Products prior to or after its acceptance. Supplier shall promptly notify Medtronic in writing if it has reason to believe that any delivery of the Products fails to meet the Specifications, fails to satisfy the representations and warranties made under this Article 5, or is otherwise not free from defects in material and workmanship.

ARTICLE 6
CERTAIN REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties.

(a) Supplier represents and warrants to Medtronic that the execution and delivery by Supplier of this Agreement and the performance by Supplier of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of Supplier, as amended, or any provision of any indenture, agreement or other instrument to which Supplier or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of Supplier. This Agreement has been duly executed and delivered by Supplier and constitutes the legal, valid and binding obligation of Supplier, enforceable in accordance with its terms, subject, as to the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

(b) Medtronic represents and warrants to Supplier that the execution and delivery by Medtronic of this Agreement and the performance by Medtronic of its obligations hereunder have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Articles of Incorporation or Bylaws of Medtronic, as amended, or any provision of any indenture, agreement or other instrument to which Medtronic or any of its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon any of the properties or assets of Medtronic. This Agreement has been duly executed and delivered by Medtronic and constitutes the legal, valid and binding obligation of Medtronic, enforceable in accordance with its terms, subject, as to

the enforcement of remedies, to the discretion of the courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.

ARTICLE 7
INDEMNIFICATION

7.1 Supplier's Liability.

(a) Supplier shall indemnify, defend and hold harmless Medtronic and its subsidiaries, and their respective officers, directors, employees, shareholders and distributors from and against and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, without limitation, reasonable legal fees and disbursements incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment or judgment) finally awarded ("Indemnifiable Losses"), resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of: (i) any breach of representation, warranty or agreement on the part of Supplier under this Agreement (collectively, "Supplier Breach"); (ii) Product Liability Damages with respect to the Products arising from or related to a Supplier Breach; (iii) any charges of patent or other intellectual property infringement due to the manufacture of the Products, the sale of the Products for use in the Field (as defined in the License and Development Agreement) or the formulation of the Product, except to the extent such formulation is required specifically for the Medtronic Specifications, and such infringement would have been avoided by compliance with Supplier Specifications (which indemnity shall be in addition to, and not in lieu of, Supplier's indemnity made in the License and Development Agreement), or (iv) other negligence or intentional misconduct of Supplier; provided that in no event shall Supplier be liable for matters for which Medtronic is responsible under Section 7.2 below or for punitive or exemplary damages.

(b) During the term of this Agreement, Supplier shall maintain, at its expense, a policy of comprehensive general liability insurance sufficient to honor the indemnity made herein, with products liability endorsement, but in no event less than * * * per occurrence and in the annual aggregate. Said policy shall name Medtronic and its Affiliates as additional beneficiaries. Supplier shall furnish Medtronic with a certificate of insurance evidencing such coverage within thirty (30) days of the execution of this Agreement, which certificate shall provide for not less than thirty (30) days notice to Medtronic prior to material change in coverage or policy cancellation.

7.2 Medtronic's Liability. Medtronic shall indemnify, defend and hold harmless Supplier and its subsidiaries and their respective officers, directors, employees, shareholders and suppliers from and against and in respect of any and all Indemnifiable Losses resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of: (a) any breach of representation, warranty or agreement on the part of Medtronic under this Agreement; (b) Product Liability Damages with respect to the Products other than those arising from or related to a Supplier Breach; (c) any charges of patent or other intellectual property infringement that does not relate to a claim described in Section 7.1(a)(iii) and involves the marketing, distribution and sale of the Product by Medtronic; or (d) negligent handling by Medtronic of the Products or changes, additions or modifications to the Products by Medtronic (other than changes, additions or modifications made to the Products by Medtronic in connection with or related to the incorporation of the Products into or onto, or the utilization of the Products in connection with, a medical device, such as a balloon, catheter or stent), or (e) other negligent or intentional misconduct of Medtronic; provided that in no event shall Medtronic be liable for matters for which Supplier is responsible under Section 7.1 above or under the License and Development Agreement, or for punitive or exemplary damages.

7.3 Procedure. If a claim by a third party is made and a party (the "Indemnitee") intends to claim indemnification under this Article 7, the Indemnitee shall promptly notify the other party (the "Indemnitor") in writing of any claim in respect of which the Indemnitee or any of its subsidiaries, directors, officers, employees, shareholders, suppliers or distributors intends to claim such indemnification. If the Indemnitor accepts liability for indemnifying Indemnitee hereunder, Indemnitor shall have sole control of the defense and/or settlement thereof; provided that the Indemnitee may participate in any such proceeding with counsel of its choice at its own expense. The indemnity agreement in this Article 7 shall not apply to amounts paid in settlement of any Indemnifiable Losses if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if adversely prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 7 but the omission to so deliver written notice to the Indemnitor shall not relieve the Indemnitor of any liability that it may otherwise have to any Indemnitee other than under this Article 7. If the Indemnitor fails to provide defense of the claim, and diligently defend or settle the same after receipt of notice from Indemnitee of, and a reasonable opportunity to cure, such failure, the Indemnitee may defend or settle the claim without prejudice to its rights to indemnification hereunder, provided that the Indemnitee does so diligently and in good faith and further does not enter into any settlement or agree to any stipulation that would adversely affect the rights of the Indemnitor or impose any additional obligation on the Indemnitor without the Indemnitor's prior written consent (which consent will not be unreasonably withheld). The Indemnitee under this Article 7, its employees and agents, shall cooperate fully with the Indemnitor and its legal representatives and provide full information in the investigation of any Indemnifiable Losses covered by this indemnification.

ARTICLE 8
TERM AND TERMINATION

8.1 Term. This Agreement shall take effect as of the date hereof and shall continue in force until * * * (the "Term"). Nothing contained in this Agreement will be interpreted as requiring either party to renew or extend this Agreement beyond the initial term or any renewal term hereof.

8.2 Termination. Notwithstanding the provisions of Section 8.1 above, this Agreement may be terminated in accordance with the following provisions:

(a) A party may terminate this Agreement by giving notice in writing to the other party if the other party is in material breach of any representation, warranty or covenant of this Agreement and, except as otherwise provided herein, shall have failed to cure such breach within * * * after receipt of written notice thereof from the first party;

(b) Either party may terminate this Agreement at any time by giving notice in writing to the other party, which notice shall be effective upon dispatch, if the other party (i) becomes insolvent; (ii) commences any action or proceeding under any bankruptcy or insolvency law for the reorganization, arrangement, composition or similar relief, (iii) has commenced against it any action or proceeding under any bankruptcy or insolvency law that remains undismissed or unstayed for a period of * * *, or (iv) makes an assignment for the benefit of creditors, goes into liquidation or receivership or otherwise loses legal control of its business; or

(c) Medtronic may terminate this Agreement upon * * * prior written notice to Supplier if Supplier has been in material breach of the representations, warranties and covenants contained herein on three or more occasions within any * * * period. In order to exercise such termination right, Medtronic must provide Supplier with written notice of such termination within * * * after the end of any applicable * * *.

8.3 Rights and Obligations on Termination. In the event of termination of this Agreement for any reason, the parties shall have the following rights and obligations:

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

(b) The terminating party shall have the right, at its option, to cancel any or all purchase orders that provide for delivery after the effective date of termination.

(c) Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination.

(d) Upon any termination of this Agreement, the parties will return and deliver to the other party all of such party's materials and documents developed during the performance of this Agreement provided that a party may retain one copy of such materials and documents for legal purposes.

(e) The parties' obligations pursuant to Articles 5, 6, 7 and 8 and Sections 2.5, 2.6 and 2.7 hereof and any and all other terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive termination of this Agreement. All other provisions of this Agreement shall terminate upon termination of this Agreement.

ARTICLE 9
FORCE MAJEURE; LICENSE

9.1 Notice of Force Majeure. Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure.

9.2 Suspension of Performance. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder (except for the obligation to pay any amounts due and owing hereunder) to the extent that such suspension is commercially reasonable.

9.3 Exercise of License.

(a) Notwithstanding the terms hereof, Medtronic shall have the right to exercise its license to make or have made the Drug granted by, and subject to the terms of, the License and Development Agreement at any time.

(b) In connection with Medtronic's exercise of the license to make or have made the Drug, and upon Medtronic's request, Supplier shall promptly provide to Medtronic, or a third party designated by Medtronic, as applicable, copies of such technical documentation and related know-how and trade secrets, and training as is reasonably necessary for a skilled manufacturer to make such Product; provided that any such third party shall agree to maintain the confidentiality of all such information to the same extent that Medtronic is obligated to do so under this Agreement.

ARTICLE 10
MISCELLANEOUS

10.1 Nondisclosure. The parties agree not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder or under other agreement between the parties or their Affiliates) any Confidential Information of the other party obtained during the term of this Agreement until the expiration of * * *. Each party further agrees to take appropriate measures to prevent any such prohibited disclosure of Confidential Information by its present and future employees, officers, agents, subsidiaries, or consultants during such period.

10.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors or assigns of the parties hereto; provided, that (i) the rights and obligations of Supplier herein may not be assigned except to any person who succeeds to substantially all of the assets and business of Supplier to which this Agreement relates, and (ii) the rights and obligations of Medtronic herein may not be assigned except to any person who succeeds to substantially all of that portion of Medtronic's business to which this Agreement relates. The Supplier may enter into agreements with third parties to provide for performance by third parties of any or all of its obligations to manufacture and supply the Products; provided that such agreement is consistent with this Agreement in all material respects. Notwithstanding the provisions of any such agreement, the Supplier shall remain obligated and liable to Medtronic for the performance of its obligations and duties hereunder.

10.3 Complete Agreement. This Agreement and the License and Development Agreement, and the Schedules and Exhibits hereto and thereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements whether written or oral relating hereto.

10.4 Governing Law. The formation, legality, validity, enforceability and interpretation of this Agreement shall be governed by the laws of the State of Minnesota, without giving effect to the principles of conflict of laws; provided, however, that nothing in Minnesota procedural law shall be deemed to alter or affect the applicability of the rules of the Federal Arbitration Act as governing arbitration of disputes as provided in Section 10.15 and, provided further, that no Minnesota laws or rules of arbitration shall be applicable. Subject to Section 10.15, the parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in the county in which arbitration is conducted with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby, and irrevocably consent to the exclusive jurisdiction and venue of such courts and waive any objections they may have at any time to such exclusive jurisdiction and venue.

10.5 Waiver, Discharge, Amendment, Etc. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall not, absent an express written waiver signed by the party making such waiver specifying the provision being waived, be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of the party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Any amendment to this Agreement shall be in writing and signed by the parties hereto.

10.6 Notices. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by facsimile (receipt confirmed electronically) to such party (or, in the case of an entity, to an executive officer of such party) or shall be sent by a reputable

express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

if to Medtronic, to:

Medtronic, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to Supplier to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President, Alan P. Timmins

With a copy to:

Hurley, Lynch & Re, PC
747 SW Industrial Way
Bend, OR 97702
Attn: Robert A. Stout, Esq.

Any party may change the above–specified recipient and/or mailing address by notice to all other parties given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by facsimile) or on the day shown on the return receipt (if delivered by mail or delivery service).

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

10.8 Titles and Headings; Construction. The titles and headings to the Articles and Sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

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

10.10 Relationship. This Agreement does not make either party the employee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement, each party shall be acting as an independent contractor.

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

10.12 Survival. All of the representations, warranties, and covenants made in this Agreement, and all terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such termination and continue thereafter in full force and effect, subject to applicable statutes of limitations.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed as original and all of which together shall constitute one instrument.

10.14 Execution of Further Documents. Each party agrees to execute and deliver without further consideration any further applications, licenses, assignments or other documents, and to perform such other lawful acts as the other party may reasonably require to fully secure and/or evidence the rights or interests herein.

10.15 Arbitration. Any dispute arising out of or relating to this Agreement, including the formation, interpretation or alleged breach hereof, shall be settled in accordance with the **Exhibit C** attached hereto. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

10.16 Public Announcement. In the event any party proposes to issue any press release or public announcement concerning any provisions of this Agreement or the transactions contemplated hereby, such party shall so advise the other parties hereto, and the parties shall thereafter use their best efforts to

cause a mutually agreeable release or announcement to be issued. Neither party will publicly disclose or divulge any provisions of this Agreement nor the transactions contemplated hereby without the other party's written consent, except as may be required by applicable law or stock exchange regulation, and except for communications to such party's employees or customers or investors or prospective investors (subject to appropriate confidentiality obligations); provided that, prior to disclosure of any provision of this Agreement that either party considers particularly sensitive or confidential to any governmental agency or stock exchange, the parties shall cooperate to seek confidential treatment or other applicable limitations on the public availability of such information. In particular, prior to such disclosure, each party shall use its best efforts to redact the payment terms specified herein and each party shall provide the other the opportunity to redact other information and seek confidential treatment of any such disclosure.

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

AVI BIOPHARMA, INC.	MEDTRONIC, INC.
By: /s/ Denis Burger	By: /s/ Michael D. Ellwein
Its: CEO	Its: VP & COO

Attachments:

Exhibit A – Specifications
Exhibit B – Pricing
Exhibit C – Alternative Dispute Resolution

EXHIBIT A

Specifications

* * *

EXHIBIT B

Pricing

* * *

* * *

EXHIBIT C

ALTERNATIVE DISPUTE RESOLUTION

1) Negotiations. If any dispute arises between Supplier and Medtronic with respect to the Supply Agreement or the License and Development Agreement (the "Agreements"), or any alleged breach thereof, any party may, by written notice to the other party, have such dispute referred to their respective designees listed below or their successors for attempted resolution by good faith negotiations within 30 days after such notice is received. Such designees are as follows:

For Supplier - the President of Supplier or his/her designee

For Medtronic - the President of Medtronic, Inc.'s business unit to which the Agreements relate, or his/her designee

Any settlement reached by the parties under this Section 1 shall not be binding until reduced to writing and signed by the above-specified designees of Medtronic and Supplier. When reduced to writing, such settlement agreement shall supersede all other agreements, written or oral, to the extent such agreements specifically pertain to the matters so settled. If the designees are unable to resolve such dispute within such 30-day period, any party may invoke the provisions of Section 2 below.

2) Arbitration. All claims, disputes, controversies, and other matters in question arising out of or relating to the Agreements, including claims for Indemnifiable Losses and disputes regarding the making of the Agreements, including claims of fraud in the inducement, or to the alleged breach hereof, shall be settled by negotiation between the parties as described in Section 1 above or, if negotiation is unsuccessful, by binding arbitration in accordance with procedures set forth in Section 3 and 4 below.

3) Notice. Notice of demand for binding arbitration shall be given in writing to the other party and shall be delivered personally or by facsimile (receipt confirmed) to an executive officer of such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

Medtronic Asset Management, Inc.
710 Medtronic Parkway NE
Minneapolis, MN 55432-5604

with separate copies thereof addressed to

Attention: General Counsel
Mail Stop LC400
Telecopier No.: (763) 572-5459

and

Attention: Vice President and Chief Development Officer
Mail Stop LC390
Telecopier No.: (763) 505-2542

if to Supplier to:

AVI BioPharma, Inc.
One SW Columbia
Portland, OR 97258
Attn: President, Alan P. Timmins

With a copy to:

Hurley, Lynch & Re, PC
747 SW Industrial Way
Bend, OR 97702
Attn: Robert A. Stout, Esq.

Any party may change the above–specified recipient and/or mailing address by notice to the other party given in the manner herein prescribed. All notices shall be deemed given on the day when actually delivered as provided above (if delivered personally or by facsimile (upon appropriate electronic confirmation of successful transmission)) or on the day shown on the return receipt (if delivered by mail or delivery service). In no event may a notice of demand of any kind be filed more than two years after the date the claim, dispute, controversy, or other matter in question was asserted by one party against another, and if such demand is not timely filed, the claim, dispute, controversy, or other matter in question referenced in the demand shall be deemed released, waived, barred, and unenforceable for all time, and barred as if by statute of limitations.

4) Binding Arbitration. Upon filing of a notice of demand for binding arbitration by any party hereto, arbitration shall be commenced and conducted as follows:

(a) Arbitrators. All claims, disputes, controversies, and other matters (collectively "matters") in question shall be referred to and decided and settled by a standing panel of three independent arbitrators, one selected by each of Supplier and Medtronic's representative and the third by the two arbitrators so selected; provided, if the amount in controversy (including reasonably anticipated future amounts or payments under the Agreement affected by such arbitrated matter) is under $300,000, a single arbitrator will be used. The third (or the single arbitrator, if applicable) shall be a former judge of one of the U.S. District Courts or one of the U.S. Court of Appeals or such other classes of persons as the parties may agree. Selection of arbitrators shall be made within 30 days after the date of the first notice of demand given pursuant to Section 3 and within 30 days after any resignation, disability or other removal of such arbitrator. Following appointment, each arbitrator shall remain a member of the standing panel, subject to removal for just cause or resignation or disability; provided, however, an arbitrator can be removed by the party who appointed the arbitrator, or in the case of the third arbitrator, by either party for any reason at any time when no matter is in arbitration.

(b) Cost of Arbitration. The cost of each arbitration proceeding, including without limitation the arbitrators' compensation and expenses, hearing room charges, court reporter transcript charges etc., shall be borne by the party whom the arbitrators determine has not prevailed in such proceeding, or borne equally by the parties if the arbitrators determine that neither party has prevailed. The arbitrators shall also award the party that prevails substantially in its pre-hearing position its reasonable attorneys' fees and costs incurred in connection with the arbitration. The arbitrators are specifically instructed to award attorneys' fees for instances of abuse of the discovery process.

(c) Location of Proceedings. An arbitration proceeding initiated by Supplier shall be held in Hennepin County, Minnesota and an arbitration proceeding initiated by Medtronic shall be held in Multnomah County, Oregon, unless the parties agree otherwise.

(d) Pre-hearing Discovery. The parties shall have the right to conduct and enforce pre-hearing discovery in accordance with the then current Federal Rules of Civil Procedure, subject to these limitations: Document discovery and other discovery shall be under the control of and enforceable by the arbitrators. The arbitrators shall permit and facilitate such other discovery as they shall determine is appropriate under the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost effective. The arbitrators shall decide discovery disputes. The arbitrators are empowered:

(i) to issue subpoenas to compel pre-hearing document or deposition discovery;

(ii) to enforce the discovery rights and obligations of the parties; and

(iii) to otherwise control the scheduling and conduct of the proceedings.

Notwithstanding any contrary foregoing provisions, the arbitrators shall have the power and authority to, and to the fullest extent practicable shall, abbreviate arbitration discovery in a manner that is fair to all parties in order to expedite the arbitration proceeding and render a final decision within six months after the pre-hearing conference.

(e) Pre-hearing Conference. Within 45 days after filing of notice of demand for binding arbitration, the arbitrators shall hold a pre-hearing conference to establish schedules for completion of discovery, for exchange of exhibit and witness lists, for arbitration briefs, for the hearing, and to decide procedural matters and all other questions that may be presented.

(f) Hearing Procedures. The hearing shall be conducted to preserve its privacy and to allow reasonable procedural due process. Rules of evidence need not be strictly followed, and the hearing shall be streamlined as follows:

(i) Documents shall be self-authenticating, subject to valid objection by the opposing party;

(ii) Expert reports, witness biographies, depositions, and affidavits may be utilized, subject to the opponent's right of a live cross-examination of the witness in person;

(iii) Charts, graphs, and summaries shall be utilized to present voluminous data, provided (i) that the underlying data was made available to the opposing party 30 days prior to the hearing, and (ii) that the preparer of each chart, graph, or summary is available for explanation and live cross-examination in person;

(iv) The hearing should be held on consecutive business days without interruption to the maximum extent practicable; and

(v) The arbitrators shall establish all other procedural rules for the conduct of the arbitration in accordance with the rules of arbitration of the Center for Public Resources.

(g) Governing Law. This arbitration provision shall be governed by, and all rights and obligations specifically enforceable under and pursuant to, the rules of the Federal Arbitration Act and the laws of the State of Minnesota shall be applied, without reference to the choice of law principles thereof, in resolving matters submitted to such arbitration.

(h) Consolidation. No arbitration shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement (other than affiliates of any such party, which affiliates may be included in the arbitration), except by written consent of the parties hereto containing a specific reference to this Agreement.

(i) Award. The arbitrators shall be required to render their final decision within six months after the pre-hearing conference. The arbitrators are empowered to render an award of general compensatory damages and equitable relief (including, without limitation, injunctive relief), but are not empowered to award punitive or presumptive damages. The award rendered by the arbitrators (1) shall be final; (2) shall not constitute a basis for collateral estoppel as to any issue; and (3) shall not be subject to vacation or modification, except in the event of fraud or gross misconduct on the part of the arbitrators.

(j) Confidentiality. The parties hereto will maintain the substance of any proceedings hereunder in confidence and make disclosures to others only to the extent necessary to properly conduct the proceedings.