

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

HEMISPHERX BIOPHARMA INC

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)
December 2, 2011

HEMISPHERX BIOPHARMA, INC.
(Exact name of registrant as specified in its charter)

Delaware
(state or other juris-
diction of incorporation)

0-27072
(Commission
File Number)

52-0845822
(I.R.S. Employer
Identification No.)

1617 JFK Boulevard, Philadelphia, Pennsylvania
(Address of principal executive offices)

19103
(Zip Code)

Registrant's telephone number, including area code: (215) 988-0080

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Item 1.01 Entry into a Material Definitive Agreement.

See Item 5.02 below.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On December 2, 2011, after reviewing the results of the 2010 and 2011 annual, non-binding advisory votes on Executive Compensation, the Compensation Committee of the Board of Directors (the "Compensation Committee") and the Board authorized the following revisions to the Executive Compensation Program:

1. Adoption of a policy to facilitate compliance with Dodd-Frank's Claw-Back Compensation Recoupment provisions; and
2. Revision of standard terms of options to be issued to Executives in the future to require that such options not vest sooner than one year from the date of issuance and that, to the extent that any such options have not vested on the date of an Executive's termination, the options shall be void as to such unvested portion.

To implement these revisions to the Executive Compensation Program, the employment agreements for Dr. Carter, Mr. Equels and Mr. Bernhardt were amended and restated as discussed in greater detail below. The agreements with Dr. Carter and Mr. Equels also were amended because these executives have assumed responsibilities and functions of certain previously eliminated executive positions. Additionally, it was determined that it would be less complicated to require Dr. Carter and Mr. Equels to assume personally certain of the business expenses related to their Florida based offices, including guest lodging, secretarial, reception and meeting facility expenses along with maintaining related home office expenses in exchange for a set modification in annual base compensation. The agreement with Mr. Bernhardt also was amended due to the upcoming year-end expiration of his current agreement.

Agreements with Dr. William A. Carter

Dr. Carter's amended and restated Employment Agreement is similar to his prior Employment Agreement. The Compensation Committee noted that Dr. Carter has assumed the role of President in addition to his duties as Chief Executive Officer and Chief Scientific Officer while diligently serving the Company. The Compensation Committee determined that, as a result of his meritorious service and commitment to the Company, along with a desire to compensate him for personally assuming future guest lodging, meeting and other administrative expenses undertaken for the benefit of the Company related to utilization of this residence and home office that had been previously paid by the Company to Retreat House LLC, Dr. Carter's base pay be established at \$625,000 per annum. Other modifications to the agreement include a one year extension of the prior term of employment, a \$2,500 per month car allowance, reimbursement for his spouse's airfare (Dr. Katalin Kovari) on trips which she attends on business related activities, four weeks of paid vacation and Company paid health insurance premiums attributed to his qualified dependents.

Agreement with Thomas K. Equels

Mr. Equels' amended and restated Employment Agreement is similar to his prior Employment Agreement. The Compensation Committee noted that Mr. Equels has industriously served the Board through his commendable service and continued commitment to the Company. With the loss of some members of the management team, Mr. Equels has increased his leadership role at the Company in both operations and administration areas while successfully serving as General Counsel, Board Executive Vice Chairman and Secretary. The Compensation Committee also determined that, to compensate him for personally assuming all meeting, reception and secretarial services for the office of the General Counsel in Florida, Mr. Equels' base pay be set at \$500,000 per annum. Other modifications to the agreement include a one year extension of the prior term of employment, a \$1,500 per month car allowance, reimbursement for his spouse's airfare on trips where she accompanies him on business related trips, four weeks of paid vacation and Company paid health insurance premiums attributed to his qualified dependents.

Agreement with Charles T. Bernhardt

Mr. Bernhardt's amended and restated Employment Agreement is similar to his prior Employment Agreement. The Compensation Committee noted that Mr. Bernhardt has conscientiously and attentively served the Company in the roles of Chief Financial Officer and Chief Accounting Officer. Based upon his continued commitment to the Company and in recognition that his existing agreement was set to expire at December 31, 2011, the Compensation Committee has determined that his existing Employment Agreement be amended and restated to extend the term for an additional year, set his base pay at \$225,000 per annum and issue him 100,000, 10-year Options that vest one year after issuance. Other modifications to the agreement included four weeks of paid vacation and Company paid health insurance premiums attributed to his qualified dependents.

The foregoing descriptions of the Executive Compensation Recoupment Policies and amended and restated employment agreements are qualified in their entirety by reference to the foregoing documents copies of which are attached and incorporated herein, respectively, as Exhibits 99.1, 10.1, 10.2 and 10.3 to this Form 8-K.

Item 8.01. Other Events.

See Item 5.02 above.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits:

- 10.1 William A. Carter Amended and Restated Employment Agreement (dated December 6, 2011).
- 10.2 Thomas K. Equels Amended and Restated Engagement Agreement (dated December 6, 2011).
- 10.3 Charles T. Bernhardt Amended and Restated Employment Agreement (dated December 6, 2011).
- 99.1 Hemispherx Executive Compensation Recoupment Policies (adopted December 2, 2011).

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 hereunto duly authorized.

December 12, 2011

HEMISPHERX BIOPHARMA, INC.

By: /s/ William A. Carter

William A. Carter M.D.,
Chief Executive Officer

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement") was made and entered into as of the 6th day of December, 2011, between **HEMISPHERX BIOPHARMA, INC.**, a Delaware corporation (the "Company"), and **Dr. William Carter** of Tavernier, Florida (the "Employee" or "Dr. Carter") and amends and restates in its entirety the Employment Agreement between the parties dated July 15, 2010 and any prior Change in Control Agreements.

WHEREAS, the Company desires to employ Dr. Carter as its Chief Executive Officer and Chairman of its Board of Directors;

WHEREAS, the Employee and the Company wish to state the terms and conditions of the Agreement herein;

NOW, THEREFORE, the Company and the Employee hereby agree as follows:

1. **Duties of Employee.** The Employee shall, during the Employment Period (as defined below), be designated as the Chief Executive Officer, President and Chairman of the Board of the Company. In the Employee's capacity as such, he shall perform such duties and functions for the Company as are customarily performed in corporations of a similar size in the medical research field. Company acknowledges that Carter has other business interests which may, from time to time, require his time and attention. Carter may continue such business interests not inconsistent with his Chief Executive Officer, President and Chairman of the Board duties.

Employee shall serve on the Board of Directors of the Company and, when designated, its affiliates and subsidiaries, providing Employee receives those director's fees at the highest rate then being paid to any other member of the board compensated for services as a director.

2. **Term.** This Agreement shall commence on, November 15, 2011 and shall terminate on December 31, 2016 (the "Initial Termination Date") unless sooner terminated in accordance with Section 5 hereof or unless renewed as hereinafter provided (such period of employment together with any extension thereto hereinafter being called the "Employment Period"). This Agreement shall be automatically renewed for successive three (3) year periods after the initial Termination Date unless written notice of refusal to renew is given by one party to the other at least 180 days prior to the Initial Termination Date or the expiration date of any renewal period. In the event of a change in control as defined in the Company's 10-K filing of March 29, 2011, the term of this agreement shall automatically be extended for three additional years.

3. **Compensation.**

(a) As compensation for the services to be performed hereunder, the Company shall pay to the Employee a salary (the "Salary"), as hereinafter provided, payable at such times as salaries of other senior executives of the company are paid but no less frequently than monthly. The Salary shall be at a rate of Six Hundred Twenty Five Thousand dollars (\$625,000) per year (the "Base Salary"), which shall be subject to cost-of-living adjustments, as provided in the succeeding subsection (b).

(b) The Salary shall consist of the Base Salary, increased as provided in this subsection. On January 1, 2012, and on January 1 of each succeeding calendar year during the Employment Period, the Base Rate shall be increased by a percentage equal to the greater of the percentage average increase in the Bureau of Labor Statistics "Consumer Price Index -- U.S. City Average -- All Items" from the December 31st of the preceding year to January 1st of the preceding year or a universal, non-discriminatory Cost Of Living salary adjustment as approved by the Compensation Committee.

(c) For each calendar year (or part thereof) during which the Agreement is in effect, the Employee shall be eligible to be paid the following bonuses:

(i) a performance bonus in an amount up to twenty-five percent (25%) of his current Base Salary as then in effect, in the sole discretion of the Compensation Committee of the Board of Directors based on the Employee's performance and/or the Company's operating results for such year; and

(ii) an incentive bonus in an amount equal to Two and One Half (2.5%) percent of the Gross Proceeds paid to the Company to the Company as a result of sales of Alferon N Injection®, Alferon® LDO, Ampligen or other Company products, or from any joint ventures or corporate partnering arrangements . For purposes herein, Gross Proceeds shall mean those cash amounts paid to the Company by the other parties to the joint -venture or corporate partnering arrangement, but shall not include (i) any amounts paid to the Company as reimbursement of expenses incurred; and (iii) any amounts paid to the Company in consideration for the Company's assets (i.e., plant, property, equipment, investments, etc.), equity or other securities. After the termination of this Agreement, for any reason, the Employee shall be entitled to receive the incentive bonus provided for in this subsection 3(c)(ii) based upon Gross Proceeds received by the Company during the 3 year period commencing on the termination of this Agreement with respect to any joint ventures or corporate partnering arrangements entered into by the Company during the term of this Agreement. Furthermore, Employee shall be entitled to a 5% bonus related to any sale of the Company, or any sale of a substantial portion of Company assets not in the ordinary course of its business. The aggregate incentive bonus hereunder as set forth above shall be capped not to exceed \$5,000,000 annually.

The performance bonus shall be eligible to be paid in cash within 90 days of the close of the calendar year. The incentive bonus shall be paid in cash within 90 days of the receipt of the Gross Proceeds by the Company.

(d) The Employee is hereby granted non-qualified stock options as additional compensation for the services to be performed hereunder as follows: on June 10, 2012 the Company shall issue to the Employee, non-qualified annual options valid for a ten year period to purchase 500,000 shares of the Company common stock with an exercise price equal to 110% of the closing price of the Company stock on the NYSE/ Amex on the trading date immediately preceding the date of the award. A similar option shall be awarded on June 10th of each year thereafter based upon an exercise price equal to 110% of the closing price of the Company stock on the NYSE Amex on the trading date immediately preceding the date of the award, for each respective year for which Dr. Carter remains an active employee at that date. All options issued pursuant to this subsection shall vest on the first anniversary of the date of award. All options issued pursuant to this subsection not vested at the time of termination of employment with the Company shall immediately become void.

(e) Notwithstanding any provision of this Agreement to the contrary, if the Employee is considered a “specified employee” as defined in the Internal Revenue Code section 409A regulations upon his “separation from service” (as defined in the section 409A regulations), the provisions of this section shall govern all distributions of deferred compensation hereunder that are subject to Internal Revenue Code section 409A. Benefit distributions that are made due to a “separation from service” occurring while the Employee is a “specified employee” shall not be made during the first six (6) months following “separation from service”. Rather, any distribution which would otherwise be paid to the Employee during such period shall be accumulated and paid to the Employee in a lump sum on the first day of the seventh month following the “separation from service”. All subsequent distributions shall be paid in the manner specified.

(f) All compensation paid to the Employee pursuant to this Agreement, including, without limitation, base salary, bonuses, stock options, and fringe benefits, shall be subject to recoupment from the Employee by the Company pursuant to the Company’s Executive Compensation Recoupment Policies adopted December 1, 2011 (the “Recoupment Policies”), as may be amended by the Company’s Board of Directors from time to time. The Employee acknowledges receipt of a copy of the Recoupment Policies and agrees that he is bound by the terms of such Policies, as they may be amended by the Board of Directors from time to time.

4. **Automobile Allowance.** The Company agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$30,000.00 per year payable monthly, as a vehicle allowance to be used to purchase, rent, lease, or own, operate and maintain a vehicle or vehicles in Florida and Pennsylvania (the “Area”). The Employee shall be responsible for maintaining personal insurance and all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. Rental Car expenses for business travel outside of the “Area” shall be reimbursable as a business expense.

5. **Fringe Benefits.**

(a) During the Employment Period, the Employee shall be entitled to receive such fringe benefits as shall be applicable from time to time to the Company’s executives generally, including but not limited to such 401(k), vacation, group life and health insurance, and disability benefit plans as may be maintained by the Company from time to time. Employee shall be entitled to four weeks paid vacation. Health Insurance for Employee and all eligible dependents shall be provided by the Company. Additionally, during the Employment Period, the Company shall pay, for the benefit of the Employee, the premiums for a disability insurance policy in the face amount of \$500,000 and the premiums for term life insurance policies in the aggregate face amount of \$6,000,000 insuring the life of the Employee, with the Employee having the right to designate the beneficiary or beneficiaries thereof.

(b) The Employee acknowledges that the Company may become subject to the health care non-discrimination rules of Internal Revenue Code Section 105(h) as made applicable by Section 10101(d) of the Patient Protection and Affordable Care Act. If the Company determines that it is or will be subject to such non-discrimination rules and that the health care insurance benefit provided by this section would cause a violation of such rules, the parties shall execute an amendment to this Agreement modifying the health care insurance benefit in such a manner that the benefit does not cause a violation of such non-discrimination rules.

6. **Termination.**

(a) The Company may discharge the Employee for cause at any time as provided herein, for purposes hereof, “cause” shall mean the willful engaging by Employee in illegal conduct or gross misconduct or gross violation of the Company’s Code of Ethics And Business Conduct for Officers which is demonstrably and materially injurious to the Company. For purposes of this Agreement, no act, or failure to act, on Employee’s part shall be deemed “willful” unless done intentionally by Employee and not in good faith and without reasonable belief that Employee’s action or omission was in the best interest of the Company. Notwithstanding the foregoing, Employee shall not be deemed to have been terminated for Cause unless and until the Company delivers to Employee a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the directors of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to Employee and an opportunity for Employee, together with counsel, to be heard before the Board) finding that, in the good faith opinion of the Board, Employee was guilty of conduct set forth above and specifying the particulars thereof in detail.

(b) The employment of the Employee shall terminate upon the death or disability of the Employee. For purposes of this subsection (b), "disability" shall mean the inability of the Employee effectively to carry out substantially all of his duties hereunder by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted for a continuous period of not less than twelve (12) months.

(c) The Employee shall have the right to terminate this Agreement upon not less than thirty (30) days, prior written notice of termination.

7. **Effect of Termination.**

(a) In the event that the Employees employment is terminated for "cause" pursuant to subsection 5(a), the Company shall pay to the Employee, at the time of such termination, only the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of his actual employment by the Company.

(b) In the event that the Employee is terminated at any time without "cause", as defined in subsection 5(a), the Company shall pay to the Employee, at the time of such termination, the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of the then current term of this Agreement.

(c) In the event the Employee's employment is terminated at his election pursuant to subsection 5(c) or due to his death or disability pursuant to 5(b), the Company shall pay to the Employee, at the time of such termination, the Base Salary and applicable benefits otherwise due and payable to him under Sections 3 and 4 through the last day of the month in which such termination occurs and for an additional twelve month period.

(d) Upon termination of Employee's employment, with or without cause, in accordance with the terms hereof, Employee shall resign from the Company's Board of Directors.

8. **Employee's Representations and Warranties.** The Employee hereby represents and warrants to the Company that he has the right to enter into this Agreement, and his execution, delivery and performance of this Agreement (a) will not violate any contract to which the Employee is a party or any applicable law or regulation nor give rise to any rights in any other person or entity and (b) are not subject to the consent of any other person or entity.

9. **Confidentiality, Invention and Non-Compete Agreement.** The Employee confirms his obligation to be bound by the terms of the Confidentiality, Invention and Non-Compete Agreement attached hereto as Exhibit B, executed as of July 1, 1993.

10. **Offices.** Dr. Carter may conduct the business of the Company from a variety of locations, including but not limited to those offices of the Chairman, President and CEO in Philadelphia, and his home office at the Retreat House in Tavernier, his principal residence. The Company shall supply that equipment necessary for full telephone, telefax and internet access at all these locations and supply a portable computer capable of remote access while employee travels domestically and internationally on Company business. Employee agrees to designate the Retreat House as both his home office and as a meeting place for a variety of Company business and social activities at no additional expense to the Company and Employee agrees not to bill, either personally or through Retreat House LLC, or any other entity, for use of the Retreat House.

At Employee's Florida workplaces, Employee shall be responsible for paying for all secretarial and receptionist services related to Employee's work conducted in Florida and provide said services at no, further expense to the Company

11. **Expenses.** The Company shall be responsible for all travel and business related expenses of Employee. Employee shall provide substantiation, in accordance with IRS regulations, as to all such expenses. Employee agrees to reimburse the Company for all unrelated or personal expenses within one month. The expenditures shall be as prescribed or limited by the Company's Travel & Expense policies and procedures; however, for air travel Employee shall be entitled to fly in business or first class at Employee's discretion. Further, at Employee's discretion, on trips for business related functions, a similar airfare expense for Employee's spouse is an approved expense reimbursable by the Company. The Company shall provide Employee with an unrestricted American Express Platinum card for all travel, entertainment and business related expenses of the company,

12. **Notices.** Any notice or other communication pursuant to this Agreement shall be in writing and shall be sent by telecopy or by certified or registered mail addressed to the respective parties as follows:

(i) If to the Company, to:

HEMISPHERX BIOPHARMA, INC.
One Penn Center
1617 JFK Boulevard, Suite 660
Philadelphia, Pennsylvania 19103
Telecopier No.: (215) 988-1739
Attention: Thomas K. Equels
General Counsel, Secretary, Executive Vice Chairman

(ii) If to the Employee, to:

Dr. William A. Carter, M.D.
HEMISPHERX BIOPHARMA, INC.
One Penn Center
1617 JFK Boulevard, Suite 660
Philadelphia, Pennsylvania 19103
Telecopier No.: (215) 988-1739

or to such other address as the parties shall have designated by notice to the other parties given in accordance with this section. Any notice or other communication shall be deemed to have been duly given if personally delivered or mailed via registered or certified mail, postage prepaid, return receipt requested, or, if sent by telecopy, when confirmed.

13. **Survival.** Notwithstanding anything in section 2 hereof to the contrary, the Confidentiality, Invention and Non-Compete Agreement shall survive any termination of this Agreement or any termination of the Employee's services.

14. **Modification.** No modification or waiver of this Agreement or any provision hereof shall be binding upon the party against whom enforcement of such modification or waiver is sought unless it is made in writing and signed by or on behalf of both parties hereto.

15. **Miscellaneous.**

(a) This Agreement shall be subject to and construed in accordance with the laws of the State of Florida. Furthermore, the parties acknowledge that the Company has had independent counsel representing it in this matter.

(b) The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate and be construed as a waiver or a continuing waiver by that party of the same or any subsequent breach of any provision of this Agreement by the other party.

(c) If any provisions of this Agreement or the application thereof to any person or circumstance shall be determined by an arbitrator (or panel of arbitrators) or any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder hereof, or the application of such provision to persons or circumstances other than those as to which it is so determined to be invalid or unenforceable, shall not - be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(d) This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors and administrators, successors and assigns.

(e) This Agreement shall not be assignable in whole or in part by either party, except that the Company may assign this Agreement to and it shall be binding upon any subsidiary or affiliate of the Company or any person, firm or corporation with which the Company may be merged or consolidated or which may acquire all or substantially all of the assets of the Company.

(f) This Agreement is intended to comply with Section 409A of the Internal Revenue Code and accompanying Treasury Regulations and guidance and any ambiguous provision shall be construed and administered in a manner that is compliant with or exempt from the application of Code section 409A. If any provision of this Agreement would cause the Employee to incur any additional tax or interest under Code section 409A, the Company shall, to the extent permitted under 409A and after consulting with the Employee, reform such provision to comply with 409A. The Agreement shall be administered in compliance with Section 409A of the Internal Revenue Code and regulations issued there under to the extent they are applicable.

[Signatures on following page]

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of the 6th day of December, 2011, between **HEMISPHERX BIOPHARMA, INC.**, a Delaware corporation (the "Company"), and **Thomas K. Equels**, of Miami, Florida (the "Employee" or "Equels") and amends and restates in its entirety the Employment Agreement between the parties dated July 15, 2010.

WHEREAS, the Company desires to employ Equels as its General Counsel, Secretary and Executive Vice Chairman of its Board of Directors;

WHEREAS, the Company and Equels acknowledge that there have been disappointing sales of Ampligen® and no sales of Alferon N Injection® nor other products generating revenues for the last fiscal year;

WHEREAS, the Company desires to retain Equels to oversee its program to reinstate or create such revenue generators and provide incentives for commercial success;

WHEREAS, due to the volume of litigation and other duties of the General Counsel the Company wants Equels on a base salary, rather than at his current hourly law firm rate;

WHEREAS, the Employee and the Company wish to state the terms and conditions of the Agreement herein;

NOW, THEREFORE, the Company and the Employee hereby agree as follows:

1. **Duties of Employee.** The Employee shall, during the Employment Period (as defined below), be designated as the Executive Vice Chairman of the Board, Secretary and General Counsel of the Company. In the Employee's capacity as such, he shall perform such duties and functions for the Company as are customarily performed by the Executive Vice Chairman of the Board, Secretary and General Counsel of corporations of a similar size in the medical research field.

The Employee's duties and functions shall also include overseeing activities of the Company related to the sales of product with the goal of generating substantial revenues through domestic and worldwide markets. The Employee shall report to the Chairman of the Board of Directors of the Company in connection with all of his duties and functions. The Employee agrees to work diligently to promote the business of the Company.

The Company acknowledges that Employee has other business interests and that employee may continue said interests, including but not limited to management of the Equels Law Firm and Mystic Oaks Farm. It is specifically agreed that Equels will no longer bill the Company for legal services provided by him as a lawyer at the Equels Law Firm, however, to the extent the Company uses the services of other lawyers from the Equels Law Firm these other lawyers and paralegals shall be billed and paid at their preapproved hourly rates.

Employee shall serve on the Board of Directors of the Company and, when designated, its affiliates and subsidiaries, providing Employee receives those Director's fees at the highest rate then being paid to any other member of the Board compensated for services as a Director.

2. **Term.** This Agreement shall commence on, November 15, 2011 and shall terminate on December 31, 2016 (the "Initial Termination Date") unless sooner terminated in accordance with Section 5 hereof or unless renewed as hereinafter provided (such period of employment together with any extension thereto hereinafter being called the "Employment Period"). This Agreement shall be automatically renewed for successive three (3) year periods after the initial Termination Date unless written notice of refusal to renew is given by one party to the other at least 180 days prior to the Initial Termination Date or the expiration date of any renewal period. In the event of a change in control as defined in the Company's 10-K filing of March 29, 2011, the term of this agreement shall automatically be extended for three additional years.

3. **Compensation.**

(a) As compensation for the services to be performed hereunder, the Company shall pay to the Employee a salary (the "Salary"), as hereinafter provided, payable at such times as salaries of other senior executives of the Company are paid but no less frequently than monthly. The Salary shall be at a rate of Five Hundred Thousand dollars (\$500,000) per year (the "Base Salary"), which shall be subject to cost-of-living adjustments, as provided in the succeeding subsection (b).

(b) The Salary shall consist of the Base Salary, increased as provided in this subsection. On January 1, 2012, and on January 1 of each succeeding calendar year during the Employment Period, the Base Rate shall be increased by a percentage equal to the greater of the percentage average increase in the Bureau of Labor Statistics "Consumer Price Index -- U.S. City Average -- All Items" from December 31st of the preceding year to January 1st of the preceding year or a universal, non-discriminatory Cost Of Living salary adjustment as approved by the Compensation Committee.

(c) For each calendar year (or part thereof) during which the Agreement is in effect, the Employee shall be eligible to be paid the following bonuses:

(i) a performance bonus in an amount up to twenty-five percent (25%) of his current Base Salary as then in effect, in the sole discretion of the Compensation Committee of the Board of Directors based on the Employee's performance and/or the Company's operating results for such year; and

(ii) an incentive bonus in an amount equal to Five (5%) percent of the Gross Proceeds paid to the Company as a result of sale of Alferon N Injection®, Alferon® LDO, Ampligen® or other Company products, or from any joint ventures or corporate partnering arrangements. For purposes herein, Gross Proceeds shall mean those cash amounts paid to the Company by the other parties to the joint venture or corporate partnering arrangement, but shall not include (i) any amounts paid to the Company as reimbursement of expenses incurred; and (ii) any amounts paid to the Company in consideration for the Company's assets (i.e., plant, property, equipment, investments, etc.), equity or other securities. After the termination of this Agreement, for any reason, the Employee shall be entitled to receive the incentive bonus provided for in this subsection 3(c)(ii) based upon Gross Proceeds received by the Company during the 3 year period commencing on the termination of this Agreement with respect to any joint ventures or corporate partnering arrangements entered into by the Company during the term of this Agreement. Furthermore, Employee shall be entitled to bonus related to any sale of the Company, or any sale of a substantial portion of Company assets not in the ordinary course of its business. The aggregate incentive bonus hereunder as set forth above shall be capped not to exceed \$5,000,000 annually.

The performance bonus shall be eligible to be paid in cash within 90 days of the close of the calendar year. The incentive bonus shall be paid in cash within 90 days of the receipt of the Gross Proceeds by the Company.

(d) The Employee is hereby granted non-qualified stock options as additional compensation for the services to be performed hereunder as follows: on June 10, 2012 the Company shall issue to the Employee, non-qualified annual options valid for a ten year period to purchase 300,000 shares of the Company common stock with an exercise price equal to 110% of the closing price of the Company stock on the NYSE Amex on the trading date immediately preceding the date of the award. A similar option shall be awarded on June 10th of each year on based upon an exercise price equal to 110% of the closing price of the Company stock on the NYSE Amex on the trading date immediately preceding the date of the award, for each respective year for which Equels remains an active employee at that date. All options issued pursuant to this subsection shall vest on the first anniversary of the date of award. All options issued pursuant to this subsection not vested at the time of termination of employment with the Company shall immediately become void.

(e) Notwithstanding any provision of this Agreement to the contrary, if the Employee is considered a "specified employee" as defined in the Internal Revenue Code section 409A regulations upon his "separation from service" (as defined in the section 409A regulations), the provisions of this section shall govern all distributions of deferred compensation hereunder that are subject to Internal Revenue Code section 409A. Benefit distributions that are made due to a "separation from service" occurring while the Employee is a "specified employee" shall not be made during the first six (6) months following "separation from service". Rather, any distribution which would otherwise be paid to the Employee during such period shall be accumulated and paid to the Employee in a lump sum on the first day of the seventh month following the "separation from service". All subsequent distributions shall be paid in the manner specified.

(f) All compensation paid to the Employee pursuant to this Agreement, including, without limitation, base salary, bonuses, stock options, and fringe benefits, shall be subject to recoupment from the Employee by the Company pursuant to the Company's Executive Compensation Recoupment Policies adopted December 1, 2011 (the "Recoupment Policies"), as may be amended by the Company's Board of Directors from time to time. The Employee acknowledges receipt of a copy of the Recoupment Policies and agrees that he is bound by the terms of such Policies, as they may be amended by the Board of Directors from time to time.

4. **Automobile Allowance.** The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$18,000.00 per year payable monthly, as a vehicle allowance to be used to purchase, rent, lease, or own, operate and maintain a vehicle or vehicles in Florida (the "Area"). The Employee shall be responsible for maintain personal insurance and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. Rental Car expenses for business travel outside of the "Area" shall be reimbursable as a business expense.

5. **Fringe Benefits.**

(a) During the Employment Period, the Employee shall be entitled to receive such fringe benefits as shall be applicable from time to time to the Company's executives generally, including but not limited to such 401(k), vacation, group life and health insurance, and disability benefit plans as may be maintained by the Company from time to time. Employee shall be entitled to four weeks paid vacation. Health Insurance for Employee and all eligible dependents shall be provided by the Company. Additionally, during the Employment Period, the Company shall pay, for the benefit of the Employee, the premiums for a disability insurance policy in the face amount of \$400,000 and the premiums for term life insurance policies in the aggregate face amount of \$3,000,000 insuring the life of the Employee, with the Employee having the right to designate the beneficiary or beneficiaries thereof.

(b) The Employee acknowledges that the Company may become subject to the health care non-discrimination rules of Internal Revenue Code Section 105(h) as made applicable by Section 10101(d) of the Patient Protection and Affordable Care Act. If the Company determines that it is or will be subject to such non-discrimination rules and that the health care insurance benefit provided by this section would cause a violation of such rules, the parties shall execute an amendment to this Agreement modifying the health care insurance benefit in such a manner that the benefit does not cause a violation of such non-discrimination rules.

6. **Termination.**

(a) The Company may discharge the Employee for cause at any time as provided herein, for purposes hereof, "cause" shall mean the willful engaging by Employee in illegal conduct, gross misconduct or gross violation of the Company's Code of Ethics and Business Conduct for Officers which is demonstrably and materially injurious to the Company. For purposes of this Agreement, no act, or failure to act, on Employee's part shall be deemed "willful" unless done intentionally by Employee and not in good faith and without reasonable belief that Employee's action or omission was in the best interest of the Company. Notwithstanding the foregoing, Employee shall not be deemed to have been terminated for Cause unless and until the Company delivers to Employee a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the directors of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to Employee and an opportunity for Employee, together with counsel, to be heard before the Board) finding that, in the good faith opinion of the Board, Employee was guilty of conduct set forth above and specifying the particulars thereof in detail.

(b) The employment of the Employee shall terminate upon the death or disability of the Employee. For purposes of this subsection (b), "disability" shall mean the inability of the Employee effectively to carry out substantially all of his duties hereunder by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(c) The Employee shall have the right to terminate this Agreement upon not less than thirty (30) days, prior written notice of termination.

7. **Effect of Termination.**

(a) In the event that the Employee's employment is terminated for "cause" pursuant to subsection 5(a), the Company shall pay to the Employee, at the time of such termination, only the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of his actual employment by the Company.

(b) In the event that the Employee is terminated at any time without "cause", as defined in subsection 5(a), the Company shall pay to the Employee, at the time of such termination, the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of the then current term of this Agreement.

(c) In the event the Employee's employment is terminated at his election pursuant to subsection 5(c) or due to his death or disability pursuant to 5(b), the Company shall pay to the Employee, at the time of such termination, the Base Salary, and applicable benefits, otherwise due and payable to him under Sections 3 and 4 through the last day of the month in which such termination occurs and for an additional twelve month period.

(d) Upon termination of Employee's employment, with or without cause, in accordance with the terms hereof, Employee shall resign from the Company's Board of Directors.

8. **Employee's Representations and Warranties.** The Employee hereby represents and warrants to the Company that he has the right to enter into this Agreement, and his execution, delivery and performance of this Agreement (a) will not violate any contract to which the Employee is a party or any applicable law or regulation nor give rise to any rights in any other person or entity and (b) are not subject to the consent of any other person or entity, including, without limitation, the Equels Law Firm and Mystic Oaks Farm.

9. **Confidentiality, Invention and Non-Compete Agreement.** The Employee confirms his obligation to be bound by the terms of a Confidentiality, Invention and Non-Compete Agreement attached hereto as Exhibit "A".

10. **Offices.** Equels may conduct the business of the Company from a variety of locations. Equels may conduct primary Company business from his offices in Miami, and Orlando, Florida. Additionally, he may render services from his Ocala home office, the Retreat House, or his other law firm offices. Additionally, subject to building and municipal approvals, Equels shall designate his office in Miami as a Company office at no additional cost to the Company other than municipal fees and signage so as to allow the Company conference facilities and work spaces in metropolitan Miami and further supplement activities being conducted at the nearby Retreat House. The Company shall supply that equipment necessary for full telephone, telefax and internet access at all these locations and supply a portable computer capable of remote access while employee travels domestically and internationally on Company business.

At Employee's Florida workplaces, Employee shall be responsible for paying for all of Employee's secretarial and receptionist services related to Employee's work conducted in Florida and provide said services at no, further expense to the Company.

11. **Expenses.** The Company shall be responsible for all travel and business related expenses of Equels. Employee shall provide substantiation, in accordance with IRS regulations, as to all such expenses. Employee agrees to reimburse the Company for all unrelated or personal expenses within one month. The expenditures shall be as prescribed or limited by the Company's Travel & Expense policies and procedures; however, for air travel Employee shall be entitled to fly in business or first class at Employee's discretion. Further, at Employee's discretion, on trips for business related functions, a similar airfare expense for Employee's spouse is an approved expense reimbursable by the Company. The Company shall provide Equels with an unrestricted American Express Platinum card to use for all travel, entertainment and business related expenses of the company, especially those associated with travel meetings related to sales of product and the various and international meetings contemplated by this agreement.

12. **Notices.** Any notice or other communication pursuant to this Agreement shall be in writing and shall be sent by telecopy or by certified or registered mail addressed to the respective parties as follows:

(i) If to the Company, to:

HEMISPHERX BIOPHARMA, INC.
One Penn Center
1617 JFK Boulevard, Suite 660
Philadelphia, Pennsylvania 1910
Telecopier No.: (215) 988-1739
Attention: Chief Executive Officer

(ii) If to the Employee, to:

Thomas K. Equels
2601 S. Bayshore Drive #600
Miami, Florida, 33133
Telecopier No.: (305) 859-9996

or to such other address as the parties shall have designated by notice to the other parties given in accordance with this section. Any notice or other communication shall be deemed to have been duly given if personally delivered or mailed via registered or certified mail, postage prepaid, return receipt requested, or, if sent by telecopy, when confirmed.

13. **Survival.** Notwithstanding anything in section 2 hereof to the contrary, the Confidentiality, Invention and Non-Compete Agreement shall survive any termination of this Agreement or any termination of the Employee's services.

14. **Modification.** No modification or waiver of this Agreement or any provision hereof shall be binding upon the party against whom enforcement of such modification or waiver is sought unless it is made in writing and signed by or on behalf of both parties hereto.

15. **Miscellaneous.**

(a) This Agreement shall be subject to and construed in accordance with the laws of the State of Florida. Furthermore, the parties acknowledge that the Company has had independent counsel representing it in this matter.

(b) The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate and be construed as a waiver or a continuing waiver by that party of the same or any subsequent breach of any provision of this Agreement by the other party.

(c) If any provisions of this Agreement or the application thereof to any person or circumstance shall be determined by an arbitrator (or panel of arbitrators) or any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder hereof, or the application of such provision to persons or circumstances other than those as to which it is so determined to be invalid or unenforceable, shall not - be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement") was made and entered into as of the 6th day of December, 2011, between **HEMISPHERX BIOPHARMA, INC.**, a Delaware corporation (the "Company"), and **Charles T. Bernhardt** (the "Employee" or "Mr. Bernhardt") and amends and restates in its entirety the Employment Agreement between the parties dated December 3, 2010.

WHEREAS, the Company desires to continue its employment of Charles T. Bernhardt as its Chief Financial Officer;

WHEREAS, the Employee and the Company wish to state the terms and conditions of the Agreement herein;

NOW, THEREFORE, the Company and the Employee hereby agree as follows:

1. **Duties of Employee.** The Employee shall, during the Employment Period (as defined below), be designated as Chief Financial Officer of the Company. In the Employee's capacity as such, he shall perform such duties and functions for the Company as are customarily performed in corporations of a similar size in the medical research field.

2. **Term.** This Agreement shall commence on 15th day of November 2011 and shall terminate on December 31, 2012 (the "Initial Termination Date") unless sooner terminated in accordance with Section 5 hereof or unless renewed as hereinafter provided (such period of employment together with any extension thereto hereinafter being called the "Employment Period"). This Agreement shall be automatically renewed for successive one (1) year periods after the initial Termination Date unless written notice of refusal to renew is given by one party to the other at least 120 days prior to the Initial Termination Date or the expiration date of any renewal period. In the event of a change in control as defined in the Company's 10-K filing of March 29, 2011, the term of this agreement shall automatically be extended for three additional years.

3. **Compensation.**

(a) As compensation for the services to be performed hereunder, the Company shall pay to the Employee a salary (the "Salary"), as hereinafter provided, payable at such times as salaries of other senior executives of the company are paid but no less frequently than monthly. The Salary shall be at a rate of two hundred Twenty Five Thousand dollars (\$225,000) per year (the "Base Salary"), which shall be subject to cost-of-living adjustments, as provided in the succeeding subsection (b).

(b) The Salary shall consist of the Base Salary, increased as provided in this subsection. On January 1, 2012, and on January 1 of each succeeding calendar year during the Employment Period, the Base Rate shall be increased by a percentage equal to the greater of the percentage average increase in the Bureau of Labor Statistics "Consumer Price Index -- U.S. City Average -- All Items" from the December 31st of the preceding year to January 1st of the preceding year or a universal, non-discriminatory Cost Of Living salary adjustment as approved by the Compensation Committee.

(c) For each calendar year (or part thereof) during which the Agreement is in effect, the Employee shall be eligible to be paid the following bonuses:

(i) a performance bonus in an amount up to twenty-five percent (25%) of his current Base Salary as then in effect, in the sole discretion of the Compensation Committee of the Board of Directors based on the Employee's performance and/or the Company's operating results for such year; and

The performance bonus shall be eligible to be paid in cash within 90 days of the close of the calendar year.

(d) The Employee is hereby granted non-qualified stock options as additional compensation for the services to be performed hereunder as follows: the Company shall issue to the Employee, non-qualified annual options valid for a ten year period to purchase 100,000 shares of the Company common stock with an exercise price equal to 110% of the closing price of the Company stock on the NYSE/Amex on the trading date immediately preceding the date this Agreement was agreed to by the Company and the Employee. All options issued pursuant to this subsection shall vest on the first anniversary of the date of award. All options issued pursuant to this subsection not vested at the time of termination of employment with the Company shall immediately become void.

(e) Notwithstanding any provision of this Agreement to the contrary, if the Employee is considered a "specified employee" as defined in the Internal Revenue Code section 409A regulations upon his "separation from service" (as defined in the section 409A regulations), the provisions of this section shall govern all distributions of deferred compensation hereunder that are subject to Internal Revenue Code section 409A. Benefit distributions that are made due to a "separation from service" occurring while the Employee is a "specified employee" shall not be made during the first six (6) months following "separation from service". Rather, any distribution which would otherwise be paid to the Employee during such period shall be accumulated and paid to the Employee in a lump sum on the first day of the seventh month following the "separation from service". All subsequent distributions shall be paid in the manner specified.

(f) All compensation paid to the Employee pursuant to this Agreement, including, without limitation, base salary, bonuses, stock options, and fringe benefits, shall be subject to recoupment from the Employee by the Company pursuant to the Company's Executive Compensation Recoupment Policies adopted December 1, 2011 (the "Recoupment Policies"), as may be amended by the Company's Board of Directors from time to time. The Employee acknowledges receipt of a copy of the Recoupment Policies and agrees that he is bound by the terms of such Policies, as they may be amended by the Board of Directors from time to time.

4. **Fringe Benefits.**

(a) During the Employment Period, the Employee shall be entitled to receive such fringe benefits as shall be applicable from time to time to the Company's executives generally, including but not limited to such 401(k), vacation, group life and health insurance, and disability benefit plans as may be maintained by the Company from time to time. Employee shall be entitled to four weeks paid vacation. Health Insurance for Employee and eligible dependents shall be provided by the Company.

(b) The Employee acknowledges that the Company may become subject to the health care non-discrimination rules of Internal Revenue Code Section 105(h) as made applicable by Section 10101(d) of the Patient Protection and Affordable Care Act. If the Company determines that it is or will be subject to such non-discrimination rules and that the health care insurance benefit provided by this section would cause a violation of such rules, the parties shall execute an amendment to this Agreement modifying the health care insurance benefit in such a manner that the benefit does not cause a violation of such non-discrimination rules.

5. **Termination.**

(a) The Company may discharge the Employee for cause at any time as provided herein, for purposes hereof, "cause" shall mean the willful engaging by Employee in illegal conduct or gross misconduct or gross violation of the Company's Code of Ethics And Business Conduct for Officers which is demonstrably and materially injurious to the Company. For purposes of this Agreement, no act, or failure to act, on Employee's part shall be deemed "willful" unless done intentionally by Employee and not in good faith and without reasonable belief that Employee's action or omission was in the best interest of the Company. Notwithstanding the foregoing, Employee shall not be deemed to have been terminated for Cause unless and until the Company delivers to Employee a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the directors of the Board at a meeting of the Board called and held for such purpose (after reasonable notice to Employee and an opportunity for Employee, together with counsel, to be heard before the Board) finding that, in the good faith opinion of the Board, Employee was guilty of conduct set forth above and specifying the particulars thereof in detail.

(b) The employment of the Employee shall terminate upon the death or disability of the Employee. For purposes of this subsection (b), "disability" shall mean the inability of the Employee effectively to carry out substantially all of his duties hereunder by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted for a continuous period of not less than twelve (12) months.

(c) The Employee shall have the right to terminate this Agreement upon not less than thirty (30) days, prior written notice of termination.

6. **Effect of Termination.**

(a) In the event that the Employees employment is terminated for "cause" pursuant to subsection 5(a), the Company shall pay to the Employee, at the time of such termination, only the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of his actual employment by the Company.

(b) In the event that the Employee is terminated at any time without "cause", as defined in subsection 5(a), the Company shall pay to the Employee, at the time of such termination, the compensation and benefits otherwise due and payable to him under Sections 3 and 4 through the last day of the then current term of this Agreement.

(c) In the event the Employee's employment is terminated at his election pursuant to subsection 5(c) or due to his death or disability pursuant to 5(b), the Company shall pay to the Employee, at the time of such termination, the Base Salary and applicable benefits otherwise due and payable to him under Sections 3 and 4 through the last day of the month in which such termination occurs and for an additional twelve month period.

7. **Employee's Representations and Warranties.** The Employee hereby represents and warrants to the Company that he has the right to enter into this Agreement, and his execution, delivery and performance of this Agreement: (a) will not violate any contract to which the Employee is a party or any applicable law or regulation nor give rise to any rights in any other person or entity; and (b) are not subject to the consent of any other person or entity.

8. **Confidentiality, Invention and Non-Compete Agreement.** The Employee confirms his obligation to be bound by the terms of the Confidentiality, Invention and Non-Compete Agreement attached hereto as Exhibit B, executed as of 3rd day of December 2010.

9. **Offices.** Mr. Bernhardt may conduct the business of the Company from a variety of locations, including but not limited to those offices of at the Company Headquarters in Philadelphia or his home office in Malvern, PA. The Company shall supply that equipment necessary for full telephone, telefax and internet access at all these locations and supply a portable computer capable of remote access while employee travels domestically and internationally on Company business.

10. **Expenses.** The Company shall be responsible for all travel and business related expenses of Mr. Bernhardt. Employee shall provide substantiation, in accordance with IRS regulations, as to all such expenses. Employee agrees to reimburse the Company for all unrelated or personal expenses within one month. The expenditures shall be as prescribed or limited by the Company's Travel & Expense policies and procedures; however, for air travel Employee shall be entitled to fly in business or first class at Employee's discretion.

11. **Notices.** Any notice or other communication pursuant to this Agreement shall be in writing and shall be sent by telecopy or by certified or registered mail addressed to the respective parties as follows:

(i) If to the Company, to:

HEMISPHERX BIOPHARMA, INC.
One Penn Center
1617 JFK Boulevard, Suite 660
Philadelphia, Pennsylvania 19103
Telecopier No.: (215) 988-1739
Attention: William A. Carter
Chairman and Chief Executive Officer

(ii) If to the Employee, to:

Charles T. Bernhardt, Chief Financial Officer
HEMISPHERX BIOPHARMA, INC.
One Penn Center
1617 JFK Boulevard, Suite 660
Philadelphia, Pennsylvania 19103
Telecopier No.: (215) 988-1739

or to such other address as the parties shall have designated by notice to the other parties given in accordance with this section. Any notice or other communication shall be deemed to have been duly given if personally delivered or mailed via registered or certified mail, postage prepaid, return receipt requested, or, if sent by telecopy, when confirmed.

12. **Survival.** Notwithstanding anything in section 2 hereof to the contrary, the Confidentiality, Invention and Non-Compete Agreement shall survive any termination of this Agreement or any termination of the Employee's services.

Hemispherx Biopharma, Inc.
Executive Compensation Recoupment Policies

Adopted: December 2, 2011

I. Defined Terms.

For purpose of these policies, the following terms have the following meanings:

“Company” means Hemispherx Biopharma, Inc.

“Compensation Committee” means the Compensation Committee of the Board of Directors of the Company.

“Covered Executive” means any current or former Executive Officer of the Company.

“Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

“Effective Date” means the effective date of these policies which shall be December 1, 2011.

“Equity Award” means stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares or other stock-based awards granted, vested or accrued under any Company plan or agreement and payable in Shares.

“Executive Officer” means an officer as defined in Rule 16a-1(f) under the Securities Exchange Act of 1934, as amended; provided that when the Securities and Exchange Commission issues a final rule implementing Section 954 of the Dodd Frank Act, the term “Executive Officer” as used in the Dodd-Frank Policy shall have the definition assigned the term “executive officer” in such final rule.

“Executive Compensation Arrangement” means an agreement between the Company and a Covered Executive entered into on or after the Effective Date pursuant to which the Company compensates the Covered Executive, including, without limitation, through salary, benefits, bonus, Equity Award, Non-Equity Compensation or deferred compensation.

“Non-Equity Incentive Compensation” means any variable cash compensation paid to a Covered Executive, wholly or partly based on publicly reported financial information related to the Company or one or more of its subsidiaries.

“Shares” means shares of common stock of the Company.

II. Dodd-Frank Compensation Recoupment Policy (the “Dodd-Frank Policy”).

A. It is the policy of the Company that, in the event that the Company is required to prepare an accounting restatement due to its material noncompliance with financial reporting requirements under the U.S. securities laws, the Company shall, to the extent permitted by governing law, require reimbursement of compensation (in an amount described below) from each Covered Executive who, at any time after the Effective Date and during the three-year period preceding the date on which the Company is required to prepare the accounting restatement, (i) received payment of Non-Equity Incentive Compensation, or (ii) realized compensation from Equity Awards, in either case based on the erroneous financial data, regardless of whether the Covered Executive engaged in misconduct or otherwise caused or contributed to the requirement for the restatement.

B. The amount of any such Non-Equity Incentive Compensation to be recovered shall be equal to the excess of (i) the amount paid to the Covered Executive calculated by reference to the erroneous financial data, over (ii) the amount that would have been paid to the Covered Executive calculated by reference to the corrected financial data.

C. For purposes of any such Equity Awards earned based on the erroneous data, the amount to be recovered shall be equal to the excess of (i) the number of Shares (or equivalent value) earned by the Covered Executive calculated by reference to the erroneous financial data, over (ii) the number of Shares (or equivalent value) that would have been earned by the Covered Executive calculated by reference to the corrected financial data, or such other recovery calculation as may hereafter be specified in final regulations issued by the Securities and Exchange Commission under the Dodd Frank Act or by the NYSE, Amex or such other national exchange upon which the Company's stock is listed.

D. Notwithstanding anything in this policy to the contrary, it is intended that this policy be administered in a manner that will comply with applicable law and securities exchange listing requirements, such as Section 304 of the Sarbanes-Oxley Act of 2002 and Section 954 of the Dodd-Frank Act. The Compensation Committee is authorized to adopt amendments to this policy, as well as rules and procedures deemed necessary or appropriate to comply with such laws and the regulations thereunder.

III. Executive Compensation Recoupment Policy (the "Recoupment Policy").

A. It is the policy of the Company that, in the event that it is determined (as described below) that an Executive Compensation Arrangement is unreasonable in whole or in part and that the Board of Directors or the Compensation Committee violated its legal duties to the Company and its stockholders by approving such Executive Compensation Arrangement, the Company shall, to the extent permitted by governing law, require reimbursement of the compensation so determined to be unreasonable (in the manner described below).

B. Recoupment under this policy shall be triggered only in the event of a final, non-appealable decision by a court of competent jurisdiction, applying Delaware law, in an action to which the Company is a party, expressly finding that the Executive Compensation Arrangement is unreasonable in whole or in part and that the Board of Directors or the Compensation Committee violated its legal duties to the Company and its stockholders by approving the Executive Compensation Agreement.

C. A recoupment of compensation under this policy shall be limited as follows: (i) the recoupment shall be non-recourse to the Executive and shall be enforced only by a set-off against compensation thereafter payable to the Executive by the Company, and (ii) the recoupment shall be equitably enforced over a period no shorter than the period over which the compensation to be recouped was paid.

IV. General.

A. The rights to recoupment set forth in these policies are in addition to any other rights that the Company may have against any Covered Executive, including any remedies at law or in equity. Application of these policies does not preclude the Company from taking any other action to enforce a Covered Executive's obligations to the Company, including termination of employment or institution of civil or criminal proceedings.

B. These policies shall be administered by the Compensation Committee, which shall have sole discretion as to when and how to seek recovery from a Covered Executive. Recovery may be obtained by reducing future incentive compensation, cancelling outstanding incentive compensation or by seeking repayment of incentive compensation paid to the Covered Executive (including the proceeds of the sale of any Shares received as incentive compensation). All actions by the Compensation Committee to recover compensation under this policy shall be taken in accordance with applicable law.

C. This policy shall apply only to Executive Compensation Arrangements, Equity Awards or awards for Non-Equity Incentive Compensation entered or granted on or after the Effective Date.

D. The Company shall take all appropriate steps to inform Covered Executives of these policies, so that such policies shall be enforceable to the fullest extent legally permissible. These steps may include, but not be limited to, providing that these policies shall be acknowledged annually by Covered Executives, and incorporating the terms of these policies into the terms of any employment agreement, incentive plan or incentive award agreement applicable to a Covered Executive.