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# 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 September 30, 2011**

**or**

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

**For the transition period from to**

**Commission file number: 0-16159**

# AxoGen, Inc.

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

| **Minnesota** | **41-1301878** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **13859 Progress Blvd., Suite 100, Alachua, FL** | **32615** |
| **(Address of principal executive offices)** | **(Zip Code)** |

**386-462-6800**
**(Registrant's telephone number, including area code)**

**Not Applicable**
**(Former name, former address and former fiscal year, if changed since last report)**

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

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

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

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☐ |
| Non-Accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☒ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

As of November 14, 2011, the registrant had 10,949,812 shares of common stock outstanding.

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**AXOGEN, INC.**
**REPORT ON FORM 10-Q FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2011**

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**Part I - Financial Information**



**Part II - Other Information**

**Forward-Looking Statements**

From time to time, in reports filed with the Securities and Exchange Commission (including this Form 10-Q), in press releases, and in other communications to shareholders or the investment community, the Company may provide forward-looking statements concerning possible or anticipated future results of operations or business developments. These statements are based on management's current expectations or predictions of future conditions, events or results based on various assumptions and management's estimates of trends and economic factors in the markets in which we are active, as well as our business plans. Words such as "expects", "anticipates", "intends", "plans", "believes", "seeks", "estimates", "projects", "forecasts", "may", "should", variations of such words and similar expressions are intended to identify such forward-looking statements. The forward-looking statements may include, without limitation, statements regarding product development, product potential or financial performance. The forward-looking statements are subject to risks and uncertainties, which may cause results to differ materially from those set forth in the statements. Forward-looking statements in this Form 10-Q should be evaluated together with the many uncertainties that affect the Company's business and its market, particularly those discussed in the risk factors and cautionary statements in the Company's filings with the Securities and Exchange Commission. Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those projected. The forward-looking statements are representative only as of the date they are made, and the Company assumes no responsibility to update any forward-looking statements, whether as a result of new information, future events or otherwise.

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## PART 1 – FINANCIAL INFORMATION

## ITEM 1 - CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

AxoGen, Inc.
Condensed Consolidated Balance Sheets

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| **Assets** | | |
| **Current assets:** | | |
| Cash and cash equivalents | $10,525,537 | $1,799,048 |
| Accounts receivable | 538,109 | 407,350 |
| Inventory | 1,662,343 | 1,902,789 |
| Prepaid expenses and other | 159,846 | 74,437 |
| Deferred financing costs | 184,995 | 1,083,630 |
| **Total current assets** | 13,070,830 | 5,267,254 |
| **Property and equipment, net** | 293,681 | 500,742 |
| **Goodwill** | 169,987 | — |
| **Intangible assets** | 906,960 | 637,771 |
| | $14,441,458 | $6,405,767 |

*See notes to condensed consolidated financial statements.*

AxoGen, Inc.
Condensed Consolidated Balance Sheets

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| **Liabilities and Stockholders' Equity (Deficit)** | | |
| **Current liabilities:** | | |
| Accounts payable and accrued expenses | $ $1,657,113 | $ 967,896 |
| Current portion of long-term debt, related party | — | 1,338,455 |
| Current portion of long-term debt | — | 7,080,512 |
| **Total current liabilities** | 1,657,113 | 9,386,863 |
| **Long-term debt** | 4,826,264 | — |
| **Preferred stock dividends payable** | — | 6,048,378 |
| **Warrant liability** | — | 2,669,815 |
| **Total liabilities** | 6,483,377 | 18,105,056 |
| **Commitments and contingencies** | | |
| **Temporary equity:** | | |
| Series B convertible preferred stock, $.00001 par value; 17,065,217 shares authorized; 9,782,609 shares issued and outstanding at December 31, 2010 | — | 4,243,948 |
| Series C convertible preferred stock, $.00001 par value; 16,798,924 shares authorized; 11,072,239 shares issued and outstanding at December 31, 2010 | — | 8,092,568 |
| Series D convertible preferred stock, $.00001 par value; 67,000,000 shares authorized; 30,156,259 shares issued and outstanding at December 31, 2010 | — | 3,075,523 |
| **Total temporary equity** | — | 15,412,039 |
| **Stockholders' equity (deficit):** | | |
| Common stock, $.01 par value; 50,000,000 shares authorized; 10,949,812 and 1,205,624 shares issued and outstanding | 109,498 | 12,056 |
| Series A convertible preferred stock, $.00001 par value; 2,544,750 shares authorized, issued and outstanding at December 31, 2010 | — | 1,125,000 |
| Additional paid-in capital | 54,142,532 | 9,934,980 |
| Accumulated deficit | (46,293,949) | (38,183,364) |
| **Total stockholders' equity (deficit)** | 7,958,081 | (27,111,328) |
| | $ 14,441,458 | $ 6,405,767 |

*See notes to condensed consolidated financial statements.*

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AxoGen, Inc.
Condensed Consolidated Statements of Operations
(unaudited)

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | September 30, 2011 | September 30, 2010 | September 30, 2011 | September 30, 2010 (As Restated See Note 11) |
| **Revenues** | $ 1,140,768 | $ 800,743 | $ 3,487,824 | $ 2,195,812 |
| **Cost of goods sold** | 1,130,332 | 160,772 | 1,893,412 | 536,185 |
| **Gross profit** | 10,436 | 639,971 | 1,594,412 | 1,659,627 |
| **Costs and expenses:** | | | | |
| Sales and marketing | 499,118 | 320,850 | 1,318,007 | 975,839 |
| Research and development | 76,982 | 36,169 | 117,149 | 75,452 |
| Salaries, wages and related costs | 1,189,289 | 771,518 | 2,941,530 | 2,522,419 |
| General and administrative | 827,054 | 336,038 | 2,005,740 | 910,585 |
| Depreciation and amortization | 44,427 | 54,220 | 191,589 | 208,502 |
| **Total costs and expenses** | 2,636,870 | 1,518,795 | 6,574,015 | 4,692,797 |
| **Loss from operations** | (2,626,434) | (878,824) | (4,979,603) | (3,033,170) |
| **Other income (expense):** | | | | |
| Interest expense | (318,110) | (193,251) | (954,360) | (516,266) |
| Interest expense – deferred financing costs | (169,007 ) | (10,473) | (1,200,413) | (134,808) |
| Gain from termination of distribution agreement | — | — | — | 1,119,094 |
| Change in fair value of warrant liability | — | 139,157 | 62,305 | (77,695) |
| Other income (expense) | 381 | 28 | (10,163) | 36 |
| **Total other income (expense)** | (486,736) | (64,539) | (2,102,631) | 390,361 |
| **Net loss** | (3,113,170) | (943,363) | (7,082,234) | (2,642,809) |
| Preferred Stock dividends (assumes all paid) | (329,832) | (308,944) | (1,028,351) | (1,243,992) |
| Net loss available to common shareholders | $(3,443,002) | $(1,252,307) | $(8,110,585) | $(3,886,801) |
| Weighted Average Common Shares outstanding – basic and diluted | 1,324,967 | 1,191,000 | 1,248,798 | 715,198 |
| Loss Per Common share – basic and diluted | $ (2.60) | $ (1.05) | $ (6.49) | $ (5.43) |

*See notes to condensed consolidated financial statements.*

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AxoGen, Inc.
Condensed Consolidated Statements of Cash Flows
(unaudited)

| | Nine Months Ended | |
|---|---|---|
| | September 30, 2011 | September 30, 2010 (As Restated See Note 11) |
| **Cash flows from operating activities:** | | |
| Net loss | $ (7,082,234) | $(2,642,809) |
| Adjustments to reconcile net loss to net cash used for operating activities: | | |
| Depreciation and amortization | 214,919 | 230,963 |
| Amortization of intangible assets | 36,265 | 34,706 |
| Amortization of deferred financing costs | 1,200,413 | 134,808 |
| Amortization of debt discount | 11,436 | 25,732 |
| Stock-based compensation | 97,499 | 198,000 |
| Gain on termination of distribution agreement | — | (1,119,094) |
| Change in fair value of warrant liability | (62,305) | 77,695 |
| Interest added to note payable | 55,562 | — |
| Change in assets and liabilities: | | |
| Accounts receivable | (109,409) | (90,754) |
| Inventory | 240,446 | 45,112 |
| Prepaid expenses and other | (66,276) | (16,228) |
| Accounts payable and accrued expenses | 572,833 | (114,763) |
| **Net cash used for operating activities** | (4,890,851) | (3,236,632) |
| **Cash flows from investing activities:** | | |
| Purchase of property and equipment | (7,858) | — |
| Acquisition of intangible assets | (45,454) | (57,256) |
| Cash acquired with Merger | 7,201,638 | — |
| **Net cash provided by (used) for operating activities** | 7,148,326 | (57,256) |
| **Cash flows from financing activities:** | | |
| Proceeds from issuance of Series D preferred stock and warrants, net | — | 1,998,000 |
| Proceeds from issuance of long-term debt | 10,500,000 | 1,316,536 |
| Proceeds from issuance of common stock | 1,000,000 | — |
| Repayments of long-term debt | (4,732,857) | — |
| Debt issuance costs | (301,778) | (96,121) |
| Proceeds from exercise of stock options | 3,649 | — |
| **Net cash provided by financing activities** | 6,469,014 | 3,218,415 |
| Net increase (decrease) in cash and cash equivalents | 8,726,489 | (75,473) |
| **Cash and cash equivalents,** beginning of year | 1,799,048 | 282,801 |
| **Cash and cash equivalents,** end of period | $10,525,537 | $ 207,328 |
| **Supplemental disclosures of cash flow activity:** | | |
| Cash paid for interest | $ 611,501 | $ 539,387 |
| **Supplemental disclosure of non-cash investing and financing activities:** | | |
| Conversion of convertible debt into Series D preferred stock | $ — | $ 2,690,994 |
| Conversion of preferred stock, convertible debt and accrued interest into common stock | 21,497,955 | 8,328,274 |
| Accretion of dividends of Series B preferred stock | 292,330 | 458,630 |
| Accretion of dividends of Series C preferred stock | 515,577 | 717,981 |
| Accretion of dividends of Series D preferred stock | 220,444 | 230,914 |
| Warrants issued with Series D preferred stock | — | 517,529 |
| Deferred financing costs related to warrants issued with debt | — | 1,492,241 |
| Preferred stock dividend payable forfeited with the Merger | 7,076,729 | — |
| Warrant Liability forfeited with the Merger | 2,607,510 | — |
| Debt discount related to warrants issued with debt | 173,736 | — |
| Net assets acquired on Merger | 11,847,916 | — |
| Note and accrued interest retired with the Merger | 4,555,562 | — |
| Reclassification from common stock to additional paid in capital for change in par value | 11,639 | — |

*See notes to condensed consolidated financial statements.*

AxoGen, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

## 1. Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of AxoGen, Inc. (the "Company" or "AxoGen") and its wholly owned subsidiary AxoGen Corporation ("AC") as of September 30, 2011 and December 31, 2010 and for the three and nine month periods ended September 30, 2011 and 2010. The Company's condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and should be read in conjunction with the audited financial statements of AC for the year ended December 31, 2010, which are included in the Registration Statement on Form S-4/A filed on August 29, 2011. The interim condensed consolidated financial statements are unaudited and in the opinion of management, reflect all adjustments necessary for a fair presentation of results for the periods presented. Results for interim periods are not necessarily indicative of results for the full year. All significant intercompany accounts and transactions have been eliminated in consolidation.

## 2. Organization and Business

**Business Summary**

On September 30, 2011, LecTec Corporation ("LecTec") completed its business combination with AC in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec, Nerve Merger Sub Corp., a subsidiary of LecTec ("Merger Sub"), and AC, which the parties amended on September 30, 2011 and August 9, 2011 (as amended, the "Merger Agreement"). Pursuant to the Merger Agreement, Merger Sub merged with and into AC, with AC continuing after the merger as the surviving corporation and a wholly owned subsidiary of LecTec (the "Merger"). Immediately following the Merger, LecTec changed its name to AxoGen, Inc. In October 2011, the Company moved its corporate headquarter facilities (principal executive office) from Texarkana, Texas to 13859 Progress Blvd., Suite 100, Alachua, Florida 32615.

In connection with the Merger,

- all outstanding AC convertible securities were converted into shares of AC common stock and exchanged for shares of AxoGen, Inc. common stock;
- all outstanding AC warrants expired unexercised;
- all outstanding shares of AC common stock, including those issued upon conversion of AC convertible securities, were exchanged for shares of AxoGen, Inc. common stock at a ratio of one share of AC common stock for 0.03727336 share of AxoGen, Inc. common stock;
- all outstanding options to purchase shares of AC common stock were exchanged for options to purchase shares of AxoGen, Inc. common stock at a ratio of one option to purchase shares of AC common stock for an option to purchase 0.03727336 share of AxoGen, Inc. common stock.

A total of 6,221,077 shares of the Company's common stock were issued in share exchange, and an additional 558,267 shares of the Company's common stock were reserved for issuance upon exercise of AC stock options which were converted into the Company's stock options. Upon completion of the Merger, all AC securities were cancelled.

Immediately following the completion of the Merger, former AC stockholders owned approximately 56.8% of the outstanding common stock of the Company, LecTec stockholders owned approximately 39.4% of the outstanding common stock of the Company, and certain investors owned the remaining 3.8% of the outstanding common stock of the Company.

For accounting purposes, AC was identified as the acquiring entity and LecTec as the acquired entity. The merger was accounted for using the purchase method of accounting for financial reporting purposes. The purchase method requires the identification of the acquiring entity, based on the criteria of Accounting Standards Codification 805-10-55-12, *Accounting for Business Combinations*. Under purchase accounting, the assets and liabilities of an acquired company (LecTec) as of the effective date of the

acquisition were recorded at their respective estimated fair values and added to those of the acquiring company. Accordingly, the condensed consolidated financial statements and related footnote disclosures presented for periods prior to the Merger are those of AC alone. The condensed consolidated Statement of Operations for the three months and nine months ended September 30, 2011 and 2010 include the operations and cash flows of AC through September 30, 2011 and the combined operations and cash flows of AC and LecTec subsequent to the Merger. The Condensed Consolidated Balance Sheets as of September 30, 2011 includes AC and LecTec.

The common stock of AC has been retrospectively adjusted to reflect the exchange ratio of one share of AC common stock for 0.03727336 share of the Company's common shares as established in the Merger Agreement.

The Company is a regenerative medicine company with a portfolio of proprietary products and technologies for peripheral nerve reconstruction and regeneration. Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of function and feeling. In order to improve surgical reconstruction and regeneration of peripheral nerves, the Company has developed and licensed technologies which are used in its products. Its product portfolio includes Avance® Nerve Graft, which the Company believes is the first and only commercially available allograft nerve for bridging nerve discontinuities (a gap created when the nerve is severed), AxoGuard® Nerve Connector, a coaptation aid allowing for close approximation of severed nerves, and AxoGuard® Nerve Protector that protects nerves during the body's healing process after surgery.

## 3. Summary of Significant Accounting Policies

### Revenue Recognition

Revenue is recognized when persuasive evidence of an arrangement exists, the price is fixed and determinable, delivery has occurred and there is a reasonable assurance of collection of the sales proceeds. Revenues for products are recognized when the tissue is delivered to the customer, at which time title passes to the customer. Once product is delivered, the Company has no further performance obligations. Delivery is defined as delivery to a customer location or segregation of product into a contracted distribution location. At such time, this product cannot be sold to any other customer. Fees charged to customers for storage and shipping of products are recognized as revenues when processed tissue is shipped to the customer or end user.

### Cash and Cash Equivalents and Concentration

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents. Cash and cash equivalents are maintained at financial institutions and, at times, balances may exceed federally insured limits. The Company has never experienced any losses related to these balances.

### Accounts Receivable and Concentration of Credit Risk

Accounts receivable are carried at the original invoice amount less an estimate made for doubtful accounts based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history and current economic conditions. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received. As of September 30, 2011 and December 31, 2010, there were no amounts deemed uncollectible and there was no allowance for doubtful accounts recorded.

Concentrations of credit risk with respect to accounts receivable are limited because a large number of geographically diverse customers make up the Company's customer base, thus spreading the trade credit risk. The Company also controls credit risk through credit approvals, credit limits and monitoring procedures.

**Inventories**

Inventories are comprised of implantable tissue, nerve grafts, AXOGuard® Nerve Connector, AXOGuard® Nerve Protector, and supplies that are valued at the lower of cost (first-in, first-out) or market and consist of the following:

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| Finished goods | $1,289,752 | $1,081,489 |
| Work in process | 215,039 | 319,293 |
| Raw materials | 157,552 | 502,007 |
| | $1,662,343 | $1,902,789 |

**Property and Equipment**

Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets as follows:

| | |
|---|---|
| Furniture and equipment | 2-5 years |
| Leasehold improvements | 5 years |
| Processing equipment | 5-7 years |

Major additions and improvements are capitalized, while replacements, maintenance and repairs, which do not improve or extend the life of the respective assets, are expensed as incurred. When assets are retired or otherwise disposed of, related costs and accumulated depreciation and amortization are removed and any gain or loss is reported as other income or expense.

**Intangible Assets**

Intangible assets consist primarily of license agreements for exclusive rights to use various patented and patent-pending technologies described in Note 6 and other costs related to the license agreements, including patent prosecution and protection costs. Such costs are capitalized and amortized on a straight-line basis over the underlying terms of the license agreements or estimated useful life of patents, ranging from 5 to 20 years.

**Goodwill**

Goodwill represents the excess of the purchase price over the fair value of net assets acquired. No impairment has been recognized during the nine months ended September 30, 2011 and 2010.

**Impairment of Long-lived Assets, Including License Agreements**

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. No impairment has been recognized for the nine months ended September 30, 2011 and 2010.

**Deferred Financing Costs**

The Company capitalizes all third-party costs incurred, including equity-based payments, associated with the issuance of long-term debt. The costs are amortized to interest expense over the term of the debt using the effective interest method.

**Advertising**

Advertising costs are expensed as incurred. Advertising costs were approximately $9,118 and $1,228 for the three months ended September 30, 2011 and 2010 and $10,758 and $5,789 for the nine months ended September 30, 2011 and 2010, respectively, and are included in sales and marketing expense on the accompanying consolidated statements of operations.

**Research and Development Costs**

Research and Development costs are expensed as incurred.

**Income Taxes**

The Company has not recorded current income tax expense due to the generation of net operating losses. Deferred income taxes are accounted for using the balance sheet approach which requires recognition of deferred tax assets and liabilities for the expected future consequences of temporary differences between the financial reporting basis and the tax basis of assets and liabilities. A valuation allowance is provided when it is more likely than not that a deferred tax asset will not be realized. A full valuation allowance has been established on the deferred tax asset as it is more likely than not that future tax benefit will not be realized. In addition, future utilization of the available net operating loss carryforward may be limited under Internal Revenue Code Section 382 as a result of changes in ownership.

The Company identifies and evaluates uncertain tax positions, if any, and recognizes the impact of uncertain tax positions for which there is a less than more-likely-than-not probability of the position being upheld when reviewed by the relevant taxing authority. Such positions are deemed to be unrecognized tax benefits and a corresponding liability is established on the balance sheet. The Company has not recognized a liability for uncertain tax positions. If there were an unrecognized tax benefit, the Company would recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. The Company's remaining open tax years subject to examination by the Internal Revenue Service include the years ended December 31, 2007 through 2010.

**Preferred Stock**

The Company accounts for its preferred stock under the provisions of Accounting Standards Codification on *Distinguishing Liabilities from Equity*, which sets forth the standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. This standard requires an issuer to classify a financial instrument that is within the scope of the standard as a liability or temporary equity if such financial instrument embodies an unconditional obligation to redeem the instrument at a specified date and/or upon an event certain to occur.

All or any number of the Series B, Series C, and Series D preferred stock may become redeemable by a majority of preferred shareholder approval at any time after January 7, 2015 at a redemption price determined in accordance with the Company's Certificate of Incorporation, plus accrued and unpaid dividends. The Company has determined that its Series B, Series C, and Series D preferred stock requires temporary equity classification as its obligation to redeem these instruments are outside the control of the Company. Permanent equity classification is not currently applicable as the preferred stock is not currently redeemable but may become so in the future.

**Derivative Financial Instruments**

The Company accounts for derivative instruments in accordance with Accounting Standards Codification on *Derivatives and Hedging*, which requires additional disclosures about the Company's objectives and strategies for using derivative instruments, how the derivative instruments and related hedging items are accounted for, and how the derivative instruments and related hedging items affect the financial statements. The Company does not use derivative instruments to hedge exposures to cash flow, market or foreign currency risk. Terms of convertible debt and equity instruments are reviewed to determine whether or not they contain embedded derivative instruments that are required to be accounted for separately from the host contract, and recorded on the balance sheet at fair value. The fair value of derivative liabilities, including freestanding warrants, is

required to be revalued at each reporting date, with corresponding changes in fair value recorded in current period operating results. An evaluation of specifically identified conditions is made to determine whether the fair value of warrants issued is required to be classified as equity or as a derivative liability.

**Fair Value of Financial Instruments**

The respective carrying value of certain on-balance-sheet financial instruments approximated their fair values due to the short-term nature of these instruments. These financial instruments include cash, accounts receivable, accounts payable and accrued expenses. The fair value of the Company's long-term debt approximates its carrying value based upon current rates available to the Company.

**Stock-Based Compensation**

Stock-based compensation cost related to stock options granted under the AC 2002 Stock Option Plan (the "Plan"—see Note 10) is measured at grant date, based on the fair value of the award, and is recognized as an expense over the employee's requisite service period. The Company estimates the fair value of each option award issued under the Plan on the date of grant using a Black-Scholes option-pricing model that uses the assumptions noted in the table below. The Company estimates the volatility of its common stock at the date of grant based on the volatility of comparable peer companies which are publicly traded. The Company determines the expected life based on historical experience with similar awards, giving consideration to the contractual terms, vesting schedules and post-vesting forfeitures. The Company uses the risk-free interest rate on the implied yield currently available on U.S. Treasury issues with an equivalent remaining term approximately equal to the expected life of the award. The Company has never paid any cash dividends on its common stock and does not anticipate paying any cash dividends in the foreseeable future. The Company used the following weighted-average assumptions for options granted during the nine months ended September 30:

| Nine months ended September 30, | 2011 | 2010 |
|---|---|---|
| Expected term (in years) | 4.0 | 4.0 |
| Expected volatility | 55.0% | 55.0% |
| Risk free rate | 1.43% | 1.58% |
| Expected dividends | 0.0% | 0.0% |

The Company estimates forfeitures when recognizing compensation expense and this estimate of forfeitures is adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from such estimates. Changes in estimated forfeitures are recognized through a cumulative catch-up adjustment, which is recognized in the period of change, and also impact the amount of unamortized compensation expense to be recognized in future periods. The Company did not apply a forfeiture allocation to its unvested options outstanding during the nine months ended September 30, 2011 as they were deemed insignificant.

**Use of Estimates**

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

**Recent Accounting Pronouncements**

In September 2011, the Financial Accounting Standards Board (FASB) issued *Accounting Standards Update (ASU) No. 2011-08, Intangibles — Goodwill and Other (Topic 350) - Testing Goodwill for Impairment.* ASU 2011-8 is intended to simplify the testing of goodwill for impairment by permitting an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test described in Topic 350. ASU 2011-08 will become effective for fiscal years beginning after December 15, 2011, with early adoption permitted in limited circumstances. The Company is assessing the impact of ASU 2011-08 on its goodwill impairment test but do not expect an impact on its financial condition or results of operations.

In December 2010, FASB issued ASU No. 2010-29, Business Combinations (Topic 805) — *Disclosure of Supplementary Pro Forma Information for Business Combinations*. If a public entity presents comparative financial statements, the entity should disclose revenue and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. ASU 2010-29 also expands the supplementary pro forma disclosures. ASU 2010-29 is effective prospectively for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010.

**4. Merger**

On September 30, 2011, LecTec completed its business combination with AC pursuant to the terms of the Merger Agreement (see Note 2).

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition. The total acquisition price of $11,847,916 has been allocated as follows:

| | |
|---|---|
| Cash and cash equivalents | $ 7,201,638 |
| Other current assets | 40,483 |
| Notes and accrued interest receivable | 4,555,562 |
| Goodwill | 169,987 |
| Intangible assets | 260,000 |
| Accounts payable and accrued expenses | (379,754) |
| Total purchase price | $11,847,916 |

The following table sets forth the unaudited pro forma results of the Company as if the Merger had taken place on the first day of the period presented. These combined results are not necessarily indicative of the results that may have been achieved had the companies always been combined.

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2011 | 2010 | 2011 | 2010 |
| Revenues | $ 1,162,118 | $ 827,116 | $ 3,553,292 | $ 2,244,968 |
| Net Loss | $ 3,029,404 | $ 1,672,139 | $ 6,472,645 | $ 4,837,655 |
| Basic and diluted net loss per common share | $ (0.28) | $ (0.15) | $ (0.59) | $ (0.44) |
| Weighted average shares – basic and diluted | 10,949,812 | 10,921,590 | 10,943,767 | 10,921,590 |

## 5. Property and Equipment

Property and equipment consist of the following:

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| Furniture and equipment | $ 522,431 | $ 514,573 |
| Leasehold improvements | 42,564 | 42,564 |
| Processing equipment | 988,716 | 988,716 |
| Less: accumulated depreciation and amortization | (1,260,030) | (1,045,111) |
| Property and equipment | $ 293,681 | $ 500,742 |

## 6. Intangible Assets

The Company's intangible assets consist of the following:

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| License agreements | $ 875,830 | $ 833,481 |
| Patents | 291,906 | 28,801 |
| Less: accumulated amortization | (260,776) | (224,511) |
| **Intangible assets, net** | $ 906,960 | $ 637,771 |

License agreements are being amortized over periods ranging from 17-20 years. Patent costs are being amortized over the estimated useful life, which is generally five years. Pending patent costs are not amortizable. Amortization expense for the nine months ended September 30, 2011 and 2010 was approximately $36,265 and $34,706, respectively. As of September 30, 2011, future amortization of license agreements is expected to be approximately $29,400 for the remainder of fiscal 2011, $118,000 for 2012 and 2013, $95,000 for 2014 and $31,000 for 2015 and 2016..

**License Agreements**

The Company has entered into multiple license agreements (the "License Agreements") with the University of Florida Research Foundation ("UFRF"), University of Texas at Austin ("UTA") and Emory University ("Emory"). Under the terms of the License Agreements, the Company acquired exclusive worldwide licenses for underlying technology used in repairing and regenerating nerves. The licensed technologies include the rights to issued patents and patents pending in the United States and international markets. The effective term of the License Agreements extends through the term of the related patents and the agreements may be terminated by the Company with 60 days prior written notice. Additionally, in the event of default, licensors may terminate an agreement if the Company fails to cure a breach after written notice. The License Agreements contain the key terms listed below:

- AxoGen pays royalty fees ranging from 1% to 3% under the License Agreements based on net sales of licensed products. One of the agreements also contains a minimum royalty of $12,500 per quarter, which may include a credit in future quarters in the same calendar year for the amount the minimum royalty exceeds the royalty fees. Also, when AxoGen pays royalties to more than one licensor for sales of the same product, a royalty stack cap applies, capping total royalties at 3.75%;

- Under one of the agreements, if AxoGen does not achieve certain regulatory milestones, which AxoGen has not achieved, AxoGen would owe an annual license maintenance fee starting on August 31, 2012 of $120,000, escalating to $240,000 on August 31, 2013 and August 31, 2014. In addition, if AxoGen does not either: (i) conduct discussions with at least three potential sublicensees or corporate partners by November 30th, 2011 or (ii) submit a term sheet to a potential sublicensee or corporate partner by May 31st, 2012, it will owe a fee of $64,000;
- If AxoGen sublicenses technologies covered by the License Agreements to third parties, AxoGen would pay a percentage of sublicense fees received from the third party to the licensor. Currently, AxoGen does not sublicense any technologies covered by License Agreements. The Company is not considered a sub-licensee under the License Agreements and does not owe any sublicensee fees for its own use of the technologies;
- AxoGen reimburses the licensors for certain legal expenses incurred for patent prosecution and defense of the technologies covered by the License Agreements; and
- Currently, under one of the License Agreements, AxoGen would owe a $15,000 milestone fee upon receiving a Phase II Small Business Innovation Research or Phase II Small Business Technology Transfer grant involving the licensed technology. The Company has not received either grant and does not owe such a milestone fee. Other milestone fees are due if AxoGen develops certain pharmaceutical or medical device products under the License Agreements. No such products are currently under development.

Royalty fees were approximately $30,116 and $20,125 during the three months ended September 30, 2011 and 2010, and $85,620 and $59,462 during the nine months ended September 30, 2011 and 2010 and are included in sales and marketing expense on the accompanying statements of operations.

## 7. Long-Term Debt

Long-term debt consists of the following:

| | September 30, 2011 (unaudited) | December 31, 2010 |
|---|---|---|
| Loan and Security Agreement with financial institutions for aggregate of $5,000,000 with 9.9% interest (at September 30, 2011), interest only payable monthly through September 2012; principal and interest payable monthly for the 30 months thereafter maturing on April 1, 2015, collateralized by all the assets of the Company and subject to certain financial covenant restrictions including minimum revenue requirements | $5,000,000 | — |
| The 2008 Loan and Security Agreement (defined later) with financial institutions for $7,500,000 with 18% interest (at September 30, 2011), payable monthly; principal payable in full on October 1, 2011 (as amended), collateralized by all the assets of the Company and subject to no financial covenant restrictions. Loan was fully paid on September 30, 2011 | — | $4,732,857 |

| | | |
|---|---|---|
| 2010 Related Party Convertible Debt with 8.0% interest; principal and interest payable in full on June 30, 2013, as amended; subordinated to the Loan and Security Agreement; collateralized by a third lien on certain property, converted into common stock on September 30, 2011 | — | 1,338,455 |
| 2010 Convertible Debt with 8.0% interest; principal and interest payable in full on June 30, 2013, as amended; subordinated to the Loan and Security Agreement; collateralized by a third lien on certain property, converted into common stock on September 30, 2011 | — | 2,359,091 |
| Total debt | 5,000,000 | 8,430,403 |
| Less unamortized debt discount | (173,736) | (11,436) |
| Less current portion | — | 8,418,967 |
| **Long-term portion** | $4,826,264 | $ — |

**Loan and Security Agreements and Warrants**

On September 30, 2011, the Company entered into the Loan and Security Agreement with MidCap Financial SBIC, LP ("MidCap"), as administrative agent, and the Lenders listed on Schedule 1 thereto (the "MidCap Loan"). The credit facility under the MidCap loan has a principal amount of $5.0 million and a term of 42 months, and is subject to prepayment penalties. Under the MidCap Loan, AxoGen is required to make interest only payments for the first 12 months, and payments of both interest and straight line amortization of principal for the remaining 30 months. The interest rate is 9.9% per annum, and interest is computed on the basis of a 360-day year and the actual number of days elapsed during which such interest accrues.

The agreement contains customary affirmative and negative covenants, including, without limitation, (i) covenants requiring AxoGen to comply with applicable laws, provide to MidCap copies of AxoGen's financial statements, maintain appropriate levels of insurance, protect, defend and maintain the validity and enforceability of AxoGen's material intellectual property, (ii) covenants restricting AxoGen's ability to dispose of all or any part of its assets (subject to certain exceptions), engage in other lines of business, change its senior management, enter into merger or consolidation transactions, incur or assume additional indebtedness, or incur liens on its assets, and (iii) covenants requiring the Company to meet certain minimum Net Invoiced Revenue as defined in the agreement.

The MidCap Loan is secured by all of AxoGen's assets. The lenders also received a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at $2.23 per share. The fair value of the warrant was $173,736 and was recorded as debt discount and is being amortized through interest expense using the effective interest method over the term of the debt

On April 21, 2008, the Company entered into a Loan and Security Agreement with two different lenders, as subsequently amended (the "2008 Loan and Security Agreement"), which provided for a loan with an aggregate principal amount of $7.5 million. The loan's maturity date was October 1, 2011. The loan bore interest at a rate of 18% per month, as amended, and was secured by all of the Company's assets. Upon the execution of the 2008 Loan and Security Agreement, the Company recorded $155,556 in deferred financing costs which were being amortized through interest expense on the accompanying consolidated statements of operations over the life of the term note. Amortization of the deferred financing costs was $12,963 and $31,417 for the nine months ended September 30, 2011 and 2010, respectively.

In conjunction with the 2008 Loan and Security Agreement, the Company also issued warrants to purchase a combined 280,803 shares of the Company's Series C Preferred Stock, immediately exercisable at $0.7345 per share, expiring on May 1, 2018. The fair value of the warrants was recorded as debt discount and was being amortized through interest expense using the effective interest method over the term of the debt. Amortization of this debt discount was $11,436 and $25,732 during the nine months ended September 30, 2011 and 2010, respectively.

During 2010, the Company executed six amendments to the 2008 Loan and Security Agreement, resulting in the issuance of a total of 28,561,272 additional warrants for the purchase of the Company's Series D preferred stock, immediately exercisable at $0.1198 per share, expiring on varying dates during the year 2020. The total fair value of the warrants of $2,160,879 was recorded as deferred financing costs during 2010 and was being amortized through interest expense—deferred financing costs on the accompanying consolidated statement of operations. The Company recognized $990,792 and $58,188 in amortization of these costs for the nine months ended September 30, 2011 and 2010, respectively. See additional discussion related to the accounting for the warrants at Note 9.

On April 11, 2011, the Company entered into a waiver and seventh amendment (the "Amendment") to the 2008 Loan and Security Agreement. The Amendment waived the event of default resulting from the failure to pay the balance due under the 2008 Loan and Security Agreement by March 31, 2011, increased the annual interest rate to 18% beginning April 1, 2011, and extended the maturity to the earlier of an acquisition event (including the Merger discussed in Note 4), or October 1, 2011. In connection with the Amendment, an event of default would occur if the Company fails to receive proceeds from equity and/or convertible subordinated debt financings of at least $2.5 million by May 31, 2011 and an additional $2.5 million by August 31, 2011. On September 30, 2011, the Company paid in full the loan under the 2008 Loan and Security Agreement. The warrants issued to the holders of the 2008 Loan and Security Agreement (see Note 9) expired upon the effective date of the Merger.

**2009 Convertible Debt and Warrants**

The 2009 Convertible Debt was initially convertible automatically into shares of conversion stock, defined in the agreement as a future "qualified next equity financing," or its Series C preferred stock. The debt was also convertible at the option of the Company in the event of a future equity financing which was not considered a "qualified next equity financing". The conversion price was defined as the per share purchase price of the applicable equity financing which results in the conversion of the debt, or $0.734 per share if converted into Series C preferred stock.

Upon issuance of the 2009 Convertible Debt, the Company recorded a total of $49,639 in debt issuance costs. These costs were included in deferred financing costs in the accompanying consolidated balance sheet and were being amortized through interest expense on the accompanying consolidated statements of operations over the debt term. Amortization of the debt issuance costs was $45,203 for the nine months ended September 30, 2010 as a result of the conversion of the debt in full into Series D preferred stock during January 2010.

In conjunction with the issuance of the 2009 Convertible Debt, the Company also issued warrants, initially for the purchase of 4,368,948 shares of the Company's Series C Preferred Stock, immediately exercisable at $0.7345 per share, expiring on August 31, 2014. The fair value of the warrants of $74,272 was recorded as debt discount and was being amortized through interest expense using the effective interest method over the term of the debt. This debt discount was expensed in full through interest expense in 2010 as a result of the conversion of the associated debt, as noted below. The lenders paid additional consideration totaling $5,234 for the purchase of the warrants. As a result of the Company's subsequent issuance of its Series D preferred stock on January 7, 2010, the warrants became exercisable for the purchase of Series D preferred stock at $0.1198 per share. All other terms of the warrants remained unchanged. See additional discussion related to the accounting for the warrants at Note 9.

As a result of the Company's closing on the sale of its Series D preferred stock on January 7, 2010, all of the $2,617,000 in principal under the 2009 Convertible Debt, along with $73,994 in accrued and unpaid interest, was converted into 22,462,387 shares of the Series D preferred stock at a rate of $0.1198 per share.

**2010 Convertible Debt and Warrants**

The 2010 Convertible Debt is convertible automatically into shares of conversion stock, defined in the agreement as a future "qualified next equity financing", or its Series C preferred stock. The debt is also convertible at the option of the Company in the event of a future equity financing which is not considered a "qualified next equity financing". The conversion price is 65% of the price per share paid at the next equity financing, as defined in the agreement.

Upon issuance of the 2010 Convertible Debt, the Company recorded a total of $122,900 in deferred financing costs which were being amortized through interest expense on the accompanying consolidated statements of operations over the debt term. Amortization of the deferred financing costs was $87,221 and $0 for the nine months ended September 30, 2011 and 2010, respectively.

In conjunction with the issuance of the 2010 Convertible Debt, the Company also issued warrants, for the purchase of shares of the Company's next private equity financing. To date, the securities underlying the warrants, the number of shares exercisable, and the exercise price have not been determined since the next private equity financing has not been consummated.

In connection with the Merger on September 30, 2011, the 2010 convertible debt of $1,338,455 and $2,359,091 and accrued interest of $263,371 were converted into 69,271,003 shares of AC common stock using a conversion price of $0.0572 (65% of price per share paid at the next equity financing or $0.088) and then were exchanged into 2,581,963 shares of AxoGen, Inc. common stock using the 0.03727336 exchange ratio.

**2011 Convertible Debt**

On May 3, 2011, the Company issued an 8% convertible note payable for $500,000 to LecTec related to the Merger. On May 31, 2011, the Company issued additional convertible notes payable under the same terms of which $2,000,000 was issued to LecTec and $500,000 was issued to certain AC shareholders. The notes were collateralized by all assets of the Company and subordinated to the Company's 2008 Loan and Security Agreement. Principal and interest accrued under the note is due upon the earlier of June 30, 2013 or a change in control other than in connection with the Merger.

On August 29, 2011, the Company issued an additional subordinated secured convertible promissory note in the principal amount of $2,000,000 to LecTec and $500,000 to certain AC shareholders on the same terms as the $3,000,000 notes issued by the Company in May 2011.

The $4,500,000 notes to LecTec were retired on September 30, 2011 after the closing of the Merger. The $1,000,000 notes to certain AC shareholders were converted into 423,709 shares of AxoGen, Inc.'s common stock using the $0.088 conversion price and 0.03727336 exchange ratio.

## 8. Stockholders' Equity (Deficit) and Temporary Equity

**AxoGen, Inc. Classes of Stock**

AxoGen, Inc.'s authorized capital stock consists of 50,000,000 shares, par value $0.01 per share. The authorized capital stock is divisible into the classes and series, has the designation, voting rights, and other rights and preferences and is subject to the restrictions that the AxoGen Board of Directors may from time to time establish. Unless otherwise designated by the AxoGen Board of Directors, all shares are common stock. AxoGen has not designated any shares other than common stock.

In connection with the Merger, 32,709,676 shares of AC common stock were converted into 1,219,199 shares of AxoGen, Inc.'s common stock using the 0.03727336 exchange ratio.

On September 30, 2011 AxoGen sold to certain investors in a private placement 423,709 shares of common stock at $2.36 per share.

**AC Classes of Stock**

***General***

AC had authorized 133,000,000 shares of common stock with a $.00001 par value.

AC had authorized 103,408,891 shares of preferred stock with a $.00001 par value which the Board of Directors is empowered to designate and issue in different series. At December 31, 2011, the Board of Directors had designated and issued 2,544,750 shares of Series A Preferred Stock; 17,065,217 shares of Series B Preferred Stock; 16,798,924 shares of Series C Preferred Stock and 67,000,000 shares of Series D Preferred Stock.

***Series A Convertible Preferred Stock***

In 2004, AC issued 2,544,750 shares of Series A Convertible Preferred Stock ("Series A") at $0.4421 per share for an aggregate price of $1,125,000. No dividends accrued or were payable on the Series A,

except upon the declaration of dividends on AC's common stock, payable at a rate per share of Series A equal to the amount the holder would be entitled to receive had all of the Series A been converted to AC common stock. Upon liquidation, Series A holders have preference to any distribution of any of the assets of AC to the holders of AC Common Stock after Series B, Series C, and Series D preferences have been paid. Series A has no redemption option. Each share of Series A is convertible into AC common stock at any time at the option of the holder by dividing the Preferred Original Issue Price by the Conversion Price at the time of conversion, which as of September 30, 2011 is equal to the purchase price of $0.4421. The conversion price is subject to adjustment, as defined. The only election right for Series A is to vote along with AC common stockholders to elect two directors to the Board. Each share of Series A has voting rights equal to the number of AC common shares as if converted.

***Series B Convertible Preferred Stock***

In 2006, AC issued 16,847,826 shares of Series B Convertible Preferred Stock ("Series B") at $0.46 per share for an aggregate price of $7,750,000. The holders of the Series B are entitled to receive a cash dividend in preference over shares of AC common stock and Series A stockholders of AC at a rate of 8% of the issued price, per annum. Upon liquidation, the Series B holders have preference to any distributions of any of AC's assets equal to the Preferred Original Issue Price plus any unpaid dividends after Series C and Series D preferences have been paid. At any time on or after January 7, 2015, the Series B stockholders have the right to redeem shares equal to the redemption price upon written request of at least 55% of the holders of Series B. Each share of Series B is convertible into AC common stock at any time at the option of the holder by dividing the Preferred Original Issue Price by the Conversion Price at the time of conversion, which as of September 30, 2011 is equal to the purchase price of $0.46. The conversion price is subject to adjustment, as defined. The holders of a majority of the Series B, C and D Preferred Stock have the right to elect three directors to the Board. Also, Series B, C and D will vote together with Series A and AC common stockholders to elect two directors to the Board. Each share of Series B, C and D has voting rights equal to the number of AC common shares as if converted.

AC is accreting dividends on the Series B, based on the stated dividend rate of 8% per annum. The Series B dividends accreted for the nine months ended September 30, 2011 was $292,329. A total of $3,152,603 in Series B dividends have been accreted as of September 30, 2011 and were forfeited in accordance with the Merger.

On June 11, 2010, 7,065,217 shares of Series B, representing $3,250,000, were converted into 7,065,217 shares of AC's common stock at the election of the stockholder.

***Series C Convertible Preferred Stock***

In 2007, AC issued 16,518,121 shares of Series C Convertible Preferred Stock ("Series C") at $0.7345 per share for an aggregate purchase price of $12,132,559. The holders of the Series C are entitled to receive a cash dividend in preference over shares of AC common stock, Series A and Series B stockholders of AC at a rate of 8% of the issued price, per annum. Upon liquidation, the Series C holders have preference to any distributions of any of AC's assets equal to the Preferred Original Issue Price plus any unpaid dividends after Series D preferences have been paid. At any time on or after January 7, 2015, the Series C shareholders have the right to redeem shares equal to the redemption price upon written request of at least 60% of the holders of Series C. Each share of Series C is convertible into AC common stock at any time at the option of the holder by dividing the Preferred Original Issue Price by the Conversion Price at the time of conversion, which as of September 30, 2011 is equal to the purchase price of $0.7345. The conversion price is subject to adjustment, as defined. The holders of a majority of the Series B, C and D have the right to elect three directors to the Board. Also, Series B, C and D will vote together with Series A and AC common stockholders to elect two directors to the Board. Each share of Series B, C and D has voting rights equal to the number of AC common shares as if converted.

AC is accreting dividends on the Series C, based on the stated dividend rate of 8% per annum. The dividends accreted for the nine months ended September 30, 2011 was $515,577. A total of $3,403,651 in Series C dividends have been accreted as of September 30, 2011 and were forfeited in accordance with the Merger.

On June 11, 2010, 5,445,882 shares of Series C, representing $4,000,000, were converted into 5,445,882 shares of AC's common stock at the election of the stockholder.

***Series D Convertible Preferred Stock and Warrants***

On January 7, 2010, AC issued 39,156,876 shares of Series D Preferred Stock ("Series D") at $0.1198 per share for an aggregate price of $4,661,326, net of issuance costs of $29,667. Of the total shares issued, 16,694,489 shares were issued for $2,000,000 in cash. The remaining 22,462,387 shares were issued in conjunction with the conversion of $2,617,000 of principal and $73,994 of

accrued and unpaid interest under the 2009 Convertible Debt (see Note 7). The holders of the Series D are entitled to receive a cash dividend in preference over all other stockholders of AC at a rate of 8% of the issued price, per annum. Upon liquidation, the Series D holders have preference to any distributions of any of AC's assets equal to the Preferred Original Issue Price plus any unpaid dividends. At any time on or after January 7, 2015, the Series D shareholders have the right to redeem shares equal to the redemption price upon written request of at least 66 2/3% of the holders of Series D. Each share of Series D is convertible into AC common stock at any time at the option of the holder by dividing the Preferred Original Issue Price by the Conversion Price at the time of conversion, which as of September 30, 2011 is equal to the purchase price of $0.1198. The conversion price is subject to adjustment, as defined. The holders of a majority of the Series B, C and D have the right to elect three directors to the Board. Also, Series B, C and D will vote together with Series A and AC common stockholders to elect two directors to the Board. Each share of Series B. C and D has voting rights equal to the number of AC common shares as if converted.

AC is accreting dividends on the Series D, based on the stated dividend rate of 8% per annum. Dividends accreted during the nine months ended September 30, 2011 were $220,444. A total of $518,426 in Series D dividends have been accreted as of September 30, 2011 and were forfeited in accordance with the Merger.

On September 11, 2010, 9,000,617 shares of Series D, representing $1,078,274, were converted into 9,000,617 of AC's common stock at the election of the stockholder.

In conjunction with the issuance of the Series D, AC also issued warrants for the purchase of 8,347,236 shares of AC's Series D Preferred Stock, immediately exercisable at $0.1198 per share, expiring on January 7, 2015. The investors paid additional consideration totaling $10,000 for the purchase of the warrants. The warrants are considered offering costs related to the Series D issuance and their fair value of $517,529 was recorded net against proceeds on the issuance of the stock during 2010.

In connection with the Merger, on September 30, 2011 each share of Series A, B, C and D convertible preferred stock, for a total of 53,555,857 shares, were converted into shares of AC common stock and exchanged for 1,996,206 shares of AxoGen, Inc. common stock using the 0.03727336 exchange ratio.

## 9. Preferred Stock Warrants and Warrant Liability

### Preferred Stock Warrants

At September 30, 2011, the outstanding warrants to purchase the Company's Series C and Series D preferred stock which were issued in connection with certain financing arrangements and amendments to existing financing arrangements were expired unexercised in connection with the Merger. Information relating to these warrants at December 31, 2010 is summarized as follows:

| Warrants | Remaining Number Outstanding | Exercise Price |
|---|---|---|
| Series C Warrants-2008 Loan and Security Agreement | 280,803 | $ 0.7345 |
| Series D Warrants-2009 Convertible Debt | 4,368,948 | $ 0.1198 |
| Series D Warrants-Series D Preferred Stock Issuance | 8,347,236 | $ 0.1198 |
| *Series D Warrants-1st Amendment | 6,243,362 | $ 0.1198 |
| *Series D Warrants-2nd Amendment | 8,694,558 | $ 0.1198 |
| *Series D Warrants-3rd Amendment | 4,462,227 | $ 0.1198 |
| *Series D Warrants-5th Amendment | 2,260,440 | $ 0.1198 |
| *Series D Warrants-6th Amendment | 6,900,685 | $ 0.1198 |
| Total | 41,558,259 | |

* Warrants issued to lenders in conjunction with amendments to 2008 Loan and Security Agreement (see Note 7).

**Warrant Liability**

The warrants issued in conjunction with the 2008 Loan and Security Agreement (see Note 7) are issuable for Series C preferred stock. The warrants issued in connection with the 2009 Convertible Debt (see Note 7) and the Series D Preferred Stock (see Note 8) are issuable for Series D preferred stock. Both the Series C and Series D preferred stock are considered contingently redeemable based on the stockholders' right to redeem the shares on or after January 7, 2015. In accordance with Accounting Standards Codification on *Distinguishing Liabilities from Equity*, since the warrants are indexed to contingently redeemable securities of the Company, they are classified as liabilities upon issuance. As liability classified derivative financial instruments, the warrants are initially and subsequently required to be measured at their fair values as defined in Accounting Standards Codification on *Fair Value Measurement*.

The change in fair value of the warrants between each reporting period is recorded in the statements of operations and was estimated by the Company using a binomial lattice valuation model. The following assumptions were incorporated into the valuations during the nine months ended September 30, 2011 and 2010:

| | Nine Months Ended September 30, 2011 | Nine Months Ended September 30, 2010 |
|---|---|---|
| Exercise price | $ 0.1198 – $0.7345 | $ 0.1198 – $0.7345 |
| Market value of stock at end of period | $0.01 | $0.01 |
| Expected dividend rate | 0.00 % | 0.00 % |
| Expected volatility | 39.77% – 66.22% | 43.59% – 72.80% |
| Risk-free interest rate | 0.09% – 3.47% | 0.18% – 2.97% |
| Expected life in years | 3.40 – 9.90 | 3.10 – 9.60 |
| Shares underlying warrants outstanding classified as liabilities | 41,558,259 | 32,397,134 |

The Company recorded income (expense) of $0 and $139,157 for the three months and $62,305 and $(77,695) for the nine months ended September 30, 2011 and 2010, respectively, as a result of the change in the fair value of warrant liability between reporting periods which was recorded in other income (expense) on the consolidated condensed statements of operations. The total balance of the warrant liability was as of September 30, 2011 of $2,607,510 was forfeited in accordance with the Merger.

**10. Stock Options**

AC has a 2002 Stock Option Plan ("the AC Plan"), which allows for issuance of incentive stock options and non-qualified stock options to employees, directors and consultants at an exercise price equal to or greater than fair market value. Under the provisions of the AC Plan, AC authorized for issuance 18,144,658 shares for purchase pursuant to options. Immediately Prior to the Merger options to purchase 30,000 shares were available for issuance.

AxoGen, Inc. has a LecTec 2010 Stock Incentive Plan (the "AxoGen Plan"), which allows for issuance of incentive stock options and non-qualified stock options to employees, directors and consultants at an exercise price equal to or greater than fair market value. On September 27, 2011, LecTec amended and restated the AxoGen Plan to, among other things, increase the number of shares of common stock authorized for issuance under the plan by 2,300,000 shares. The total number of shares authorized for issuance under the AxoGen Plan is 2,750,000 shares. As a result of the Merger, options granted under the AC Plan were assumed by the Company so that each stock option pursuant to the AC Plan so assumed continued to have, and be subject to, the same terms and conditions of such stock option immediately prior to the Merger, except that (i) each AC Plan stock option is exercisable for that number of shares of Company common stock equal to the product of the number of shares of AC common stock that were issuable upon exercise of such stock option immediately prior to the Merger multiplied by the Closing Ratio ("as defined in the Merger Agreement") and (ii) the per share exercise price for the shares of LecTec common stock issuable upon the exercise of such assumed stock option will be equal to the quotient determined by dividing the exercise price per share of AxoGen common stock at which such stock option was exercisable immediately prior to the Merger by the Closing Ratio. The options to employees typically vest 12.5% every six months over a four-year period and those to directors and certain executive officers have vested 25% per quarter over one year or had no vesting period. Options issued to consultants vest over the service period ranging from three to ten years. Options have terms ranging from seven to ten years.

Stock-based compensation expense was $37,498 and $66,000 for the three months and $97,499 and $198,000 for the nine months ended September 30, 2011 and 2010, respectively. Total future stock compensation expense related to nonvested awards is expected to be approximately $90,359 at September 30, 2011.

## 11. Restatement

The Company had entered into a long-term agreement to supply nerve grafts to a single distribution customer and received an up-front fee of $1,500,000 as consideration for exclusive distribution servicing of the products, which was recorded as deferred revenue. The Company agreed to repay the up-front fee to the servicer by discounting future service fees by 10% until the date that the Company had granted discounts aggregating the full amount of the up-front fee repayment obligation. On February 26, 2010, the Company and the customer mutually agreed to terminate the agreement thereby releasing the Company from the repayment obligation. During the second quarter of 2009, all activities associated with the distribution agreement ceased and negotiations began between the Company and the distributor to terminate the agreement. On February 26, 2010, the Company and the customer formally executed a Settlement and Mutual Release Agreement effectively releasing the Company from the repayment of the remaining obligation. The remaining balance of deferred revenue of $1,119,094 was originally amortized to gain from termination of distribution agreement during the fourth quarter of 2009 as the Company believed the conditions surrounding the termination of the distribution agreement existed as of December 31, 2009. The Company has since determined that since the Settlement and Mutual Release Agreement was not executed until February 26, 2010, and the Company was not legally released from all potential obligations under the original agreement until that date, the gain should have been recognized in the first quarter of 2010. As a result, the statement of operations for the nine months ended September 30, 2010 has been restated as follows:

**Statement of Operations**
**Nine Months Ended September 30, 2010**
**(Unaudited)**

| | As Previously Reported | Adjustment | As Restated |
|---|---|---|---|
| Gain from termination of distribution agreement | $ — | $1,119,094 | $ 1,119,094 |
| Total other income (expense) | (728,733) | 1,119,094 | 390,361 |
| Net Loss | (3,761,903) | $1,119,094 | (2,642,809) |

## ITEM 2 - MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### OVERVIEW

On September 30, 2011, LecTec Corporation ("LecTec") completed its business combination with AxoGen Corporation ("AC") in accordance with the terms of an Agreement and Plan of Merger, dated as of May 31, 2011, by and among LecTec, Nerve Merger Sub Corp., a subsidiary of LecTec ("Merger Sub"), and AC, which the parties amended on September 30, 2011 and August 9, 2011 (as amended, the "Merger Agreement"). Pursuant to the Merger Agreement, Merger Sub merged with and into AC, with AC continuing after the merger as the surviving corporation and a wholly owned subsidiary of LecTec (the "Merger"). Immediately following the Merger, LecTec changed its name to AxoGen, Inc. In October 2011, AxoGen, Inc. moved its corporate headquarter facilities (principal executive office) from Texarkana, Texas to 13859 Progress Blvd., Suite 100, Alachua, Florida 32615.

*For purposes of this Item 2, unless otherwise noted, "AxoGen" or the "Company" refers to AC prior to the Merger and AxoGen, Inc. upon the completion of the Merger. Historical financial results are those of AC prior to the Merger and that of AxoGen, Inc. upon the completion of the Merger, and do not include the historical financial results of LecTec prior to the completion of the Merger.*

*For purposes of Items 3 and 4 in Part I, and Part II, of this Report, unless otherwise noted, "AxoGen" or the "Company" refers to AxoGen, Inc. upon the completion of the Merger.*

AxoGen is a regenerative medicine company with a portfolio of proprietary products and technologies for peripheral nerve reconstruction and regeneration. Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of function and feeling. In order to improve surgical reconstruction and regeneration of peripheral nerves, AxoGen has developed and licensed technologies, which are used in its products. Its product portfolio includes Avance® Nerve Graft which AxoGen believes is the first and only commercially available allograft nerve for bridging nerve discontinuities (a gap created when the nerve is severed) AxoGuard® Nerve Connector, a coaptation aid allowing for close approximation of severed nerves, and AxoGuard® Nerve Protector, an implant that protects nerves during the body's healing process after surgery. Revenue from the distribution of these products is the main contributor to AxoGen's total reported sales and has been the key component of its growth to date.

AxoGen revenues increased in the third quarter and first nine months of 2011 compared to the third quarter and first nine months of 2010 as a result of increased penetration into key accounts through both its direct sales force and independent distributors. AxoGen plans to continue to broaden its sales and marketing focus in future months which should have a positive contribution to its revenue growth.

From May 2009 to December 2010, AxoGen temporarily stopped the manufacturing of Avance® Nerve Graft due to adequate inventory. In January 2011, AxoGen resumed the manufacturing of Avance® Nerve Graft, and as a result has incurred higher processing and testing fees, travel costs and temporary labor costs compared to the same periods last year. In addition, to adequately reflect the amount of inventory, AxoGen reviewed and adjusted inventories and established reserves. In reviewing inventory expiration AxoGen wrote off inventory for products manufactured in early 2009. AxoGen believes that it has the necessary inventories for its anticipated sales growth. In addition, AxoGen believes that its manufacturing has been stabilized, and it intends to continue to increase production efficiencies.

AxoGen's operating expenses consist of salaries, wages and related costs, sales and marketing expenses, general and administrative expenses, research and development expenses and depreciation expenses. Operating expenses for the three and nine months ended September 30, 2011 also included Merger related costs. The largest component of operating expenses, salaries, wages and related costs, are expected to increase both in absolute amount and as a percentage of operations expenses as AxoGen increases its sales force and adds on other employees to support revenue growth.

In August 2011, AxoGen restated its financial statements for the years ended December 31, 2010 and 2009 to correct an error in recording a gain on termination of a distribution agreement with a distributor. This gain, in the amount of $1,119,094, was previously recorded in 2009 as AxoGen believed the conditions surrounding the termination of the distribution agreement existed as of December 31, 2009. AxoGen has since determined that, since a Settlement and Mutual Release Agreement between AxoGen and the distributor was entered into on February 26, 2010, the gain should have been recognized in 2010. See Note 11 to unaudited condensed consolidated financial statements.

**Results of Operations**

*Comparison of the Three and Nine Months Ended September 30, 2011 and 2010*

Revenues

During the quarter ended September 30, 2011, AxoGen revenues were $1,141,000 which represents an increase of $340,000 or 42.5% when compared to revenues for the quarter ended September 30, 2010. During the nine months ended September 30, 2011, AxoGen revenues were $3,488,000 which represents an increase of $1,292,000 or 58.8% when compared to revenues for the nine months ended September 30, 2010. The increase for the quarter and nine months was principally the result of increased penetration into key accounts.

Gross Profit

In the third quarter of 2011, AxoGen took a $614,000 inventory write-off for expiring inventory and a $214,000 write-off for raw material obsolescence that increased cost of goods. As a result, AxoGen's gross profit decreased 98.4% to $10,000 for the quarter ended September 30, 2011 from $640,000 for the quarter ended September 30, 2010. This decrease was also due to other contributing factors including the mix of Avance® Nerve Graft item codes and product mix between Avance® Nerve Graft and AxoGuard® products, as gross profit within, and among, these products varies. Additionally, in January 2011, AxoGen resumed the manufacturing of Avance® Nerve Graft and incurred higher processing and testing fees, travel costs and temporary labor costs compared to same periods last year. AxoGen's gross profit decreased 4.0% to $1,594,000 for the nine months ended September 30, 2011 from $1,660,000 for the nine months ended September 30, 2010, primarily due to the same factors as those applicable to the third quarter of 2011.

Costs and Expenses

Total cost and expenses for AxoGen increased 73.6% to $2,637,000 for the quarter ended September 30, 2011 compared to $1,519,000 for the quarter ended September 30, 2010. As a percentage of revenues, total operating expenses were 231.1% for the quarter ended September 30, 2011 compared to 189.6% for the quarter ended September 30, 2010. These increases were primarily due to increasing sales and marketing activities, increases in salaries as AxoGen hires to meet growth needs and increased general and administrative costs associated with the Merger. Total cost and expenses for AxoGen increased 40.1% to $6,574,000 for the nine months ended September 30, 2011 compared to $4,693,000 for the nine months ended September 30, 2010, primarily due to the same factors that caused the increase in total cost and expenses for the third quarter of 2011, with additional increase attributable to an increase in general and administrative costs associated with securing additional funding throughout the nine months. As a percentage of revenues, total operating expenses were 188.5% for the nine months ended September 30, 2011 compared to 213.7% for the nine months ended September 30, 2010, as operating costs were absorbed by increased revenues.

Salaries, wages and related costs, the largest component of total operating expenses, increased 54.0% for the quarter ended September 30, 2011 to $1,189,000 from $772,000 for the same quarter last year. As a percentage of revenues, salaries, wages and related costs were 104.2% for the quarter ended September 30, 2011 compared to 96.4% for the quarter ended September 30, 2010. The increases were primarily due to AxoGen increasing its sales and sales support to meet growth needs. Salaries, wages and related costs increased 16.7% for the nine months ended September 30, 2011 to $2,942,000 from $2,522,000 compared to the same nine month period last year, primarily attributable to the same factors applicable to the third quarter 2011. As a percentage of revenues, salaries, wages and related costs were 84.3% for the nine months ended September 30, 2011 compared to 114.9% for the nine months ended September 30, 2010.

Sales and marketing expenses increased 55.5% to $499,000 for the quarter ended September 30, 2011 compared to $321,000 for the quarter ended September 30, 2010. As a percentage of revenues, sales and marketing expenses were 43.7% for the quarter ended September 30, 2011 compared to 40.1% for the quarter ended September 30, 2010. These increases were primarily due to an increase in sales and marketing activity as the Company expands support for both its direct sales force and independent distributors. Sales and marketing expenses increased 35.0% to $1,318,000 for the nine months ended September 30, 2011 compared to $976,000 for the nine months ended September 30, 2010, primarily attributable to the same factors applicable to the third quarter of 2011. As a percentage of revenues, sales and marketing expenses were 37.8% for the nine months ended September 30, 2011 compared to 44.4% for the nine months ended September 30, 2010.

General and administrative expenses increased 146.1% to $827,000 for the quarter ended September 30, 2011 compared to $336,000 for the quarter ended September 30, 2010. As a percentage of revenues, general and administrative expenses were 72.5% for the quarter ended September 30, 2011 compared to 41.9% for the quarter ended September 30, 2010. These increases were principally a result of an increase in consulting, accounting and legal services and other expenses associated with the Merger. General and administrative expenses increased 120.2% to $2,006,000 for the nine months ended September 30, 2011 compared to $911,000 for the nine months ended September 30, 2010. This increase was principally a result of an increase in consulting, accounting and legal services and other expenses associated with the Merger and other efforts to secure additional funding. As a percentage of revenues, general and administrative expenses were 57.5% for the nine months ended September 30, 2011 compared to 41.5% for the nine months ended September 30, 2010.

Depreciation and amortization expense decreased slightly for both the quarter and nine months ended September 30, 2011 compared to the same 2010 periods. This decrease was due to certain AxoGen assets becoming fully depreciated during each of the periods. Research and development expenses increased for the three and nine months ended September 30, 2011 as compared to the comparable periods in 2010. Because AxoGen's products are developed for sale in their current use, it conducts limited direct research and development, but intends to pursue new products and new applications for existing products in the future that may result in increased spending.

Other Income and Expenses

Interest expense increased 64.8% to $318,000 for the quarter ended September 30, 2011 compared to $193,000 for the quarter ended September 30, 2010. Interest expense increased 84.9% to $954,000 for the nine months ended September 30, 2011 compared to $516,000 for the nine months ended September 30, 2010. These increases were primarily due to the interest accrued related to the 2010 convertible debt and the increase in the stated interest rate during 2011 pursuant to the amendment to AxoGen's Loan and Security Agreement originally entered into in April 2008, as later discussed in "—Liquidity and Capital Resources."

Interest expense—deferred financing costs increased $159,000 and $1,065,000 for the quarter and nine months ended September 30, 2011, respectively, compared to the comparable periods in 2010. This increase is primarily due to the amortization of deferred financing costs associated with warrants issued as consideration for several amendments executed during 2010 related to the Loan and Security agreement originally entered into in April 2008. These became fully amortized by March 31, 2011.

Gain from the termination of the distribution agreement was $1,119,000 in 2010. AxoGen had entered into a long-term agreement to supply nerve grafts to a single national distributor. The distributor paid an up-front deposit of $1,500,000 to AxoGen, as consideration for exclusive distribution servicing of AxoGen's products, which was initially recorded as deferred revenue. The repayment of the up-front deposit was to be subsequently released and recognized as revenue through discounts of future service fees, until AxoGen had granted discounts aggregating the full amount of the deposit. During the second quarter of 2009, all activities associated with the distribution agreement ceased and negotiations began between AxoGen and the distributor to terminate the agreement. On February 26, 2010, AxoGen and the distributor formally executed a Settlement and Mutual Release Agreement releasing AxoGen from the repayment of the remaining portion of the obligation. AxoGen recorded the gain on termination during the first quarter of 2010 when the settlement agreement was executed.

The gain from the change in fair value of warrant liability decreased $140,000 for the nine months ended September 30, 2011 compared to same period in 2010. This decrease is principally due to the decline in the fair value of AxoGen's warrant liability during the nine months ended September 30, 2011 as compared to the 2010.

### Effect of Inflation

Inflation has not had a significant impact on the Company's operations or cash flow.

### Liquidity and Capital Resources

#### Long-Term Debt

On September 30, 2011, the Company, entered into the Loan and Security Agreement with MidCap Financial SBIC, LP ("MidCap"), as administrative agent, and the Lenders listed on Schedule 1 thereto (the "MidCap Loan"). The MidCap Loan has a principal amount of $5.0 million and a term of 42 months, and is subject to prepayment penalties. Under this agreement, AxoGen is required to make interest only payments for the first 12 months, and payments of both interest and straight line amortization of principal for the remaining 30 months. The interest rate is 9.9% per annum, and interest is computed on the basis of a 360-day year and the actual number of days elapsed during which such interest accrues.

The MidCap Loan contains customary affirmative and negative covenants, including, without limitation, (i) covenants requiring AxoGen to comply with applicable laws, provide to MidCap copies of AxoGen's financial statements, maintain appropriate levels of insurance and protect, defend and maintain the validity and enforceability of AxoGen's material intellectual property, (ii) covenants restricting AxoGen's ability to dispose of all or any part of its assets (subject to certain exceptions), engage in other lines of business, changes in its senior management, enter into merger or consolidation transactions, incur or assume additional indebtedness, or incur liens on its assets, and (iii) covenants requiring the Company to meet certain minimum Net Invoiced Revenue as defined in the agreement.

The MidCap Loan is secured by all of AxoGen's assets. The Lenders also received a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at $2.23 per share.

On April 21, 2008, AxoGen entered into a Loan and Security Agreement with Oxford Finance Corporation and ATEL Ventures, Inc., as subsequently amended (the "2008 Loan and Security Agreement"), which provided for a loan with an aggregate principal amount of $7.5 million. The loan's maturity date was October 1, 2011. The loan bears interest at a rate of 18% per month and was secured by all of AxoGen's assets. AxoGen used the proceeds from the MidCap Loan to repay the entire outstanding balance of the Loan and Security Agreement.

On June 11, 2010, AxoGen entered into Convertible Debt Agreements for an aggregate principal amount of $3.7 million with 8% interest and principal and interest payable in full on June 30, 2013, as amended. The Convertible Debt Agreements were collateralized by a third lien on certain property and were subordinated to the 2008 Loan and Security Agreement. Immediately prior to the closing of the Merger, the Convertible Debt Agreements pursuant to its terms automatically converted into AC common stock which was then exchanged for AxoGen, Inc. common stock pursuant to the terms of the Merger Agreement.

On May 3, 2011, AxoGen issued an 8% Convertible Note Payable to LecTec Corporation for $500,000. On May 31, 2011, AxoGen issued additional convertible notes payable under the same terms of which $2,000,000 was issued to LecTec and $500,000 was issued to certain AC shareholders. On August 29, 2011, AxoGen issued an additional subordinated secured convertible promissory note in the principal amount of $2,000,000 to LecTec and $500,000 to certain AC shareholders. These notes were collateralized by all of AxoGen's assets and subordinated to the 2008 Loan and Security Agreement. Immediately prior to the closing of the Merger, the notes held by investors other than LecTec automatically convert into AC's common stock which was then exchanged for LecTec common stock pursuant to the terms of the Merger Agreement. Immediately after to the closing of the Merger, the notes held by LecTec were retired.

The Company had no material commitments for capital expenditures at September 30, 2011 or 2010.

**Cash Flow Information**

AxoGen had working capital of $11,413,000 and a current ratio of 7.89 at September 30, 2011 compared to working capital deficit of $4,120,000 and a current ratio of 0.56 at December 31, 2010. The increase in working capital and decrease in the current ratio at September 30, 2011, compared to December 31, 2010, was primarily due to the Merger. The Company believes it has sufficient cash resources to meet its liquidity requirements for the next 12 months.

During the nine months ended September 30, 2011, the Company had a net increase in cash and cash equivalents of $8,726,000 as compared to a net decrease of cash and cash equivalents of $75,000 for the nine months ended September 30, 2010. The Company's principal sources and uses of funds were as follows:

*Cash used in operating activities*

The Company used $4,891,000 of cash for operating activities for the nine months ended September 30, 2011, as compared to using $3,237,000 of cash for operating activities for the nine months ended September 30, 2010. This increase in cash used in operating activities is primarily attributed to the increase in net loss for the nine months ended September 30, 2011, offset by additional amortization of deferred financing costs; an Increase in our accounts payable and accrued expenses and no gain on termination of a distribution agreement that was present in the nine months ended September 30, 2010.

*Cash provided by (used) for investing activities*

Investing activities for the nine months ended September 30, 2011 provide cash of $7,148,000 as compared to using $57,000 of cash for the nine months ended September 30, 2010. This increase in cash is principally attributable to the cash acquired in the Merger.

*Cash provided by financing activities*

Financing activities for the nine months ended September 30, 2011 provided cash of $6,469,000, as compared to $3,218,000 of cash for the nine months ended September 30, 2010. This increase in cash used is primarily attributed to issuance of $10,500,000 of additional debt offset by the repayment of $4,733,000 of debt during the nine months ended September 30, 2011.

**Off-Balance Sheet Arrangements**

AxoGen does not have any off-balance sheet arrangements.

## RECENT ACCOUNTING PRONOUNCEMENTS

In September 2011, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2011-08, Intangibles — Goodwill and Other (Topic 350) – Testing Goodwill for Impairment. ASU 2011-8 is intended to simplify the testing of goodwill for impairment by permitting an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test described in Topic 350. ASU 2011-8 will become effective for fiscal years beginning after December 15, 2011, with early adoption permitted in limited circumstances. The Company is assessing the impact of ASU 2011-08 on its goodwill impairment test but do not expect an impact on its financial condition or results of operations.

In December 2010, FASB issued ASU No. 2010-29, Business Combinations (Topic 805) — Disclosure of Supplementary Pro Forma Information for Business Combinations. If a public entity presents comparative financial statements, the entity should disclose revenue and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. ASU 2010-29 also expands the supplementary pro forma disclosures. ASU 2010-29 is effective prospectively for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010. ASU 2010-29 will only affect the Company if there are future business combinations.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

## ITEM 4. CONTROLS AND PROCEDURES

**Evaluation of Disclosure Controls and Procedures**

The Company maintains "disclosure controls and procedures" as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, and Board of Directors, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable assurance of achieving the desired objectives, and we necessarily are required to apply our judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures.

Our management, including our principal executive officer and principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2011 and concluded that our disclosure controls and procedures were effective.

**Changes in Internal Controls Over Financial Reporting**

During the quarter ended September 30, 2011, there were no changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d–15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II – OTHER INFORMATION

### ITEM 1 - Legal Proceedings

None

### ITEM 1A - RISK FACTORS

Risk Factors disclosed in the LecTec Corporation's Proxy Statement/Prospectus filed pursuant to Rule 424(b)(3), Registration No. 333-175379 on September 2, 2011, under the captions "Risk Factors—Risk Relating to AxoGen's Business," "Risk Factors—Risks Related to the Regulatory Environment in which AxoGen Operates" and "Risk Factors—Risks Related to AxoGen's Intellectual Property" are incorporated by reference herein. There have been no material changes to these risk factors, which recently filed Proxy Statement/Prospectus filed pursuant to Rule 424(b)(3), Registration No. 333-175379; however, those risk factors continue to be relevant to an understanding of the Company's business, financial condition, and operating results, etc. Accordingly, potential and current investors should review and consider these risk factors in making any investment decision with respect to the Company's securities. An investment in the Company's securities continues to have a high degree of risk.

### ITEM 2 - UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

On September 30, 2011, the Company sold 423,709 shares of the Company's common stock at $2.36 per share to certain investors. The proceeds of this sale will be used for general working capital purposes.

### ITEM 3 - DEFAULTS UPON SENIOR SECURITIES

None.

### ITEM 4 - (REMOVED AND RESERVED)

### ITEM 5 - OTHER INFORMATION

#### Additional Material AC Agreements

*Corporate Headquarters Lease*

On February 6, 2007, AC entered into a five-year lease for approximately 4,742 square feet of office space at 13859 Progress Boulevard in Alachua, Florida for $7,903 per month. The space is used as AC's and the Company's headquarters and main corporate office.

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**ITEM 6 - EXHIBITS**

| Exhibit No. | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated as of May 31, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Exhibit 2.1 to LecTec Corporation's Current Report on Form 8-K filed on June 2, 2011) |
| 2.2 | Amendment No. 1 to Agreement and Plan of Merger, dated as of June 30, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Appendix A2 to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 2.3 | Amendment No. 2 to Agreement and Plan of Merger, dated as of August 9, 2011, among LecTec Corporation, Nerve Merger Sub Corp. and AxoGen Corporation (incorporated by reference to Appendix A3 to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011) |
| 3.1 | Amended and Restated Articles of Incorporation of AxoGen, Inc. (incorporated by reference to Appendix B to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011). |
| 3.2 | AxoGen, Inc. Amended and Restated Bylaws. (incorporated by reference to Appendix C to the Proxy Statement/Prospectus included as part of LecTec Corporation's Amendment No. 2 to Registration Statement on Form S-4 filed on August 29, 2011). |
| 10.10 | Lease dated as of February 6, 2007, by and between AxoGen Corporation and WIGSHAW, LLC, its successors and assigns. |
| 31.1 | Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith. |
| 31.2 | Certification of Principle Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith. |
| 32.1 | Certification Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith. |
| 101 | Financial Statements from the Quarterly Report on Form 10-Q of AxoGen, Inc. for the quarterly period ended September 30, 2011, formatted in XBRL (Extensible Business Reporting Language): (i) the Condensed Balance Sheets, (ii) the Condensed Statements of Operations, (iii) the Condensed Statements of Cash Flows and (iv) the Notes to Condensed Financial Statements. |

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**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.

**AXOGEN, INC.**

Dated November 14, 2011

/s/ KAREN ZADEREJ

**Karen Zaderej**
**Chief Executive Officer**
**(Principal Executive Officer)**

/s/ GREGORY G. FREITAG

**Gregory G. Freitag**
**Chief Financial Officer**
**(Principal Financial Officer)**

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**Exhibit 10.10**

LEASE

THIS LEASE ("Lease") is entered into and effective as of February 6, 2007 ("Effective Date") by and between WIGSHAW, LLC, a Florida limited liability company, its successors and assigns ("Landlord") with its address at P.O. Box 1857, Alachua, Florida 32616, and Axogen Corporation, a Delaware corporation with its address at P.O. Box 357787, Gainesville, Florida 32635-7787 ("Tenant").

W I T N E S S E T H:

WHEREAS, the parties desire to enter into a Lease Agreement for space in the Progress One Building located in the Progress Corporate Park.

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) paid by Tenant to Landlord, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that commencing as of the "Effective Date". Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, the "Leased Premises" (as defined in Section 1.1h), subject to the following terms and conditions:

ARTICLE 1. SUMMARY OF LEASE PROVISIONS

1.1. BASIC DATA. Certain fundamental provisions of this Lease are presented in this summary format in this Article to facilitate convenient reference by the parties hereto. All references in this Lease to the following terms shall be accorded the meanings or definitions given in this Article, as though such meaning or definition were fully set forth throughout the text hereof, unless such meanings are expressly modified, limited or expanded elsewhere in this Lease. This Article, together with the terms herein referenced, shall constitute an integral part of this Lease.

(a) "Annual Gross Rent" shall be, as scheduled below:

| LEASE YEAR | RENT PER SQUARE FT | ANNUAL GROSS RENT: | MONTHLY PAYMENT RENT: |
|---|---|---|---|
| 1 | $20.00 | $94,840.00 | $7,903.00 |
| 2 | $20.00 | $94,840.00 | $7,903.00 |
| 3 | $20.00 | $94,840.00 | $7,903.00 |
| 4 | $20.00 | $94,840.00 | $7,903.00 |
| 5 | $20.00 | $94,840.00 | $7,903.00 |

Rent and other sums payable by Tenant to Landlord under this Lease Agreement, plus any applicable tax, shall be paid to Landlord, without deduction or offset at its management office presently located at PO Box 1990 Alachua, Florida 32615 or such other place as Landlord may hereafter specify in writing.

(b) "Building" shall mean the building located on certain real property located in the City of Alachua, Alachua County, Florida, having a current address of 13859 Progress Blvd., Alachua, FL 32615.

(c) "Business Days" shall mean all days, except Saturdays, Sundays, New Year's Day, President's Day, Memorial Day, Independence Day, Christmas Day, Labor Day, Thanksgiving, and other recognized holidays.

(d) "Commencement Date" shall mean the date which is five (5) days after the Certificate of Occupancy is issued for the Leased Premises. If the Certificate of Occupancy is not issued by June 30, 2007, the Landlord shall not be deemed to be in default hereunder or otherwise liable in damages to Tenant, and Tenant may at its option cancel and terminate this lease, in which event neither party shall have any further liabilities or obligations hereunder, except the Landlord shall repay to Tenant any prepaid rent or

security deposit.

(f) “Estimated Completion Date” shall mean April 30, 2007.

(g) “Lease Year” shall mean each twelve (12)-month period beginning on the Commencement Date and each anniversary thereof, provided the Commencement Date is on the first day of a month. If the Commencement Date falls on a day other than the first day of a month, then the first Lease Year shall begin on the first day of the calendar month next following the Commencement Date. If the Commencement Date falls on a day other than the first day of a month, then the Term shall be extended by the period of time (“Partial Lease Year”) from such Commencement Date through the end of the calendar month in which the Commencement Date falls.

(h) “Leased Premises” shall be deemed to mean approximately 4,742 square feet of finished office grade area extending to the exterior faces of all walls or to the center line of those walls separating the Leased Premises from other leased premises, together with appurtenances specifically granted in this Lease, but reserving and excepting to Landlord the use of the exterior walls and the roof and the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Leased Premises in locations which will not materially interfere with Tenant’s use thereof, which area shall be located in the Progress One Building in Progress Corporate Park with its address at 13859 Progress Blvd., Alachua, Florida 32615 and depicted by the crosshatched area on the site plan attached hereto and made a part hereof as Exhibit “A”.

Provided that Tenant is not in default under this Lease Agreement, Tenant shall have the option of leasing the adjoining approximately 3,600 square feet as depicted by the shaded area on Exhibit “A” beginning in the third Lease Year at the rate of $20.00 a square foot per year for the remaining term of this Lease Agreement. Tenant must notify Landlord in writing at least one hundred and twenty (120) days prior to the end of the second Lease Year if Tenant is exercising its option to lease the adjoining space. All of the terms and conditions of this Lease Agreement shall apply to the additional space.

(i) “Normal Business Hours” shall mean from 8:00 a.m. to 5:00 p.m. during all Business Days.

(j) “Rentable Area” or “Rentable Square Footage” shall mean the total area (as it exists from time to time). Rentable Area of the Leased Premises is hereby deemed to mean approximately 4,742 square feet.

(k) “Security Deposit” shall mean the sum of Eight Thousand ($8,000.00) dollars.

(l) “Term” shall mean five Lease Years (plus a Partial Lease Year, if applicable) commencing on the Commencement Date and ending at 11:59 p.m. on the last day of the sixtieth full calendar month following the Commencement Date (“Expiration Date”) or on such earlier date in which the Term of this Lease shall expire or be canceled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to law, and furthermore, shall include any renewal term, if such renewal term come into existence.

(m) “Use” shall mean general office, laboratory use, manufacturing, storage, distribution, and shipping and receiving and any other purpose approved by the Parties, in writing.

## ARTICLE 2. LEASED PREMISES AND TERM

2.1. Leased Premises. Subject to the rent, terms and conditions herein set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Leased Premises, subject to the terms and provisions of this Lease to have and to hold for the Term, unless the Term shall be sooner terminated as hereinafter provided.

2.2. Construction and Acceptance of the Leased Premises. Landlord shall proceed to construct an improvement upon the Leased Premises in compliance with the “Flex Building Space: Office Standards”

identified in Exhibit "C" attached hereto, with such minor variations as Landlord may deem advisable, and tender the Leased Premises to Tenant. The Leased Premises shall be deemed to be "Ready for Occupancy" five (5) days after the Certificate of Occupancy is issued. Landlord shall notify Tenant in writing of the date of receipt of the Certificate of Occupancy as soon as such date is known. Tenant agrees to accept possession thereof and to proceed with due diligence to perform any Tenant Work. Tenant Work causing venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense.

2.3. Landlord's Reservation. Landlord shall retain absolute dominion and control over the Common Area and shall operate and maintain the Common Area in such manner as Landlord in its sole discretion, shall determine; provided, however, such exclusive right shall not operate to prohibit Tenant from its material benefit and enjoyment of the Leased Premises for the permitted Use as defined in Section 1(k). Tenant acknowledges that without advance notice to Tenant and without any liability to Tenant in any respect, Landlord shall have the right to:

(a) Close off any of the Common Area to whatever extent required in the opinion of Landlord to prevent a dedication of any of the Common Area or the accrual of any rights by any person or the public to the Common Area, provided such closure does not materially deprive Tenant of the benefit and enjoyment of the Leased Premises for its permitted Use;

(b) Temporarily close any of the Common Area for maintenance, alteration or improvement purposes;

(c) Select, appoint or contract with any person for the purpose of operating and maintaining the Common Area, on such terms and conditions as Landlord deems reasonable;

(d) Change the size, use, shape or nature of any such Common Area, provided such change does not materially deprive Tenant of the benefit and enjoyment of the Leased Premises. So long as Tenant is not thus deprived of the use and benefit of the Leased Premises, Landlord will also have the right at any time to change the arrangement or location of, or both, or to regulate or eliminate the use of any concourse, or any stairs, toilet or other public conveniences in the Building, without incurring any liability to Tenant or entitling Tenant to any abatement of rent;

(e) Expand the existing Building to cover a portion of the Common Area, convert the Common Area to a portion of the Building or convert any portion of the Building (excluding the Leased Premises). Upon erection of any buildings or expansion of the Building, or change in Common Area, the portion of the Building upon which such structures have been erected will no longer be deemed to be a part of the Common Area. In the event of any such changes in the size or use of a building or Common Area, Landlord may make an appropriate adjustment in the rentable square feet of the Building.

(f) In addition to the other rights of Landlord under this Lease, Landlord reserves to itself and its respective successors and assigns the right to: (i) change the street address and/or name of the Building; (ii) erect, use and maintain pipes and conduits in and through the Leased Premises; (iii) control the use of the roof and exterior walls of the Building; and (iv) use Tenant's name in promotional materials (featuring Tenant only) and relating to the Building or Progress Corporate Park, with written permission from Tenant, which permission shall not be unreasonably withheld (it being understood that Landlord shall have the right, without obtaining the consent of Tenant, to use Tenant's name in promotional materials that feature a list of all or major tenants of the Building and/or Progress Corporate Park). Landlord may exercise any or all of the foregoing rights without being deemed to be guilty of an eviction or disturbance or interruption of the business of Tenant or Tenant's use or occupancy of the Leased Premises.

2.4. Term. The Term of this Lease shall commence on the Commencement Date as defined in Section 1, above, and shall extend to the last day of the fifth Lease Year at 11:59 p.m. or on such earlier date on which the term of this Lease may expire or be terminated pursuant to the provisions of this Lease or pursuant to law.

## ARTICLE 3. RENT AND SECURITY DEPOSIT

3.1. Rent. Tenant agrees to pay to the order of Landlord, without demand, set-off or deduction during the Term, the Annual Gross Rent, in an amount equal to the sums specified in Section 1.1(a). The Annual Gross Rent shall be due and payable in twelve (12) equal monthly installments, in advance, commencing on the Commencement Date and continuing on the first day of each and every subsequent calendar month during the Term, in the amount as scheduled in Section 1.1(a); provided, however, that the installment of the Annual Gross Rent payable for the first full calendar month following the Commencement Date (and if the Commencement Date occurs on a date other than on the first day of a calendar month, the installment of Annual Gross Rent prorated from such date until the first day of the following month) shall be due and payable at the time of execution and delivery of this Lease. Tenant shall pay the Annual Gross Rent by good check or in lawful currency of the United States of America.

3.2. Late Payment Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder after the expiration of any applicable grace period will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, other remedies for nonpayment of Rent notwithstanding, and except as expressly provided herein, in the event any installment payment of Annual Gross Rent due Landlord hereunder shall not be paid within ten (10) days after the due date, Tenant shall pay Landlord a late payment fee of ONE HUNDRED DOLLARS ($100.00), in addition to such other amounts owed under this Lease. In addition, Tenant shall pay Landlord interest on any delinquent payment due Landlord hereunder at the Default Rate; provided that interest shall not be payable on late charges incurred by Tenant or on any amounts upon which late charges are paid by Tenant to the extent such interest would cause the total interest to be in excess of that legally permitted.

3.3. Increase in Insurance Premiums and Ad Valorem Taxes. Tenant shall pay as Additional Rent its annual proportionate share of the increase in insurance premiums paid by Landlord for the Building and liabilities pursuant to Article 9.3. Tenant's annual proportionate share on the Date of Commencement is $1,241.13 . If an increase in any insurance premiums paid by Landlord for the Building is caused by Tenant's use of the Leased Premises, or if Tenant vacates the Leased Premises and causes an increase in such premiums, then Tenant shall pay as Additional Rent the amount of such increase to Landlord. The Tenant's share in the increase in insurance premiums shall be charged to Tenant as Additional Rent and shall become payable by Tenant in one lump sum within fifteen (15) days after demand or at Landlord's option, divided by twelve (12) and collected with monthly rent.

Tenant shall pay as Additional Rent its annual proportionate share of the increase in ad valorem taxes (real estate) paid by Landlord with respect to the building and land upon which it is situated. Tenant's annual proportionate share on the Date of Commencement is $13,661.00. The Tenant's share in the increase in ad valorem taxes shall be charged to Tenant as Additional Rent and shall become payable by Tenant in one lump sum within fifteen (15) days after demand or at Landlord's option, divided by twelve (12) and collected with monthly rent.

Even though the term of the Lease Agreement has terminated or expired and Tenant has vacated the Leased Premises, when a final determination is made of Tenant's share of the insurance premiums and tax for the year in which the Lease terminates, Tenant shall immediately pay any sums due upon demand.

3.4. Holding Over. In the event that Tenant does not vacate the Leased Premises upon the expiration or termination of this Lease and continues to hold over in possession of the Leased Premises without the written consent of Landlord, Tenant shall be a tenant at will for the holdover period and all of the terms and provisions of this Lease shall be applicable during that period, including the obligation to pay Rent, except that Tenant shall pay Landlord as an installment of the Annual Gross Rent for the period of such holdover an amount equal to two times (200%) the Annual Gross Rent which would have been payable by Tenant had the holdover period been a part of the original term of this Lease. The rental payable during the holdover period shall be payable to Landlord on demand.

3.5. Sales Tax. In addition to the Annual Gross Rent, and all other Additional Rent to be paid by Tenant hereunder, Tenant shall be liable and pay to Landlord all rental, sales and use taxes, if any, levied or imposed

by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the Rent or other charge upon which the tax is based as set forth above.

3.6. Rights to Additional Rent. Any and all sums of money or charges, other than Annual Gross Rent, required to be paid by Tenant under this Lease, whether or not the same be so designated, shall be considered "Additional Rent." Landlord shall have the same rights and remedies with respect to Additional Rent as with respect to Annual Gross Rent. The term "Rent" is hereby defined to mean the Annual Gross Rent, and any additional charge, fee or rent payable by Tenant to Landlord under this Lease.

3.7. Security Deposit. Tenant has deposited with the Landlord the sum of Eight Thousand ($8,000.00) dollars ("Security Deposit"). The Security Deposit constitutes security for Tenant's satisfactory performance of the terms, covenants and conditions of this Lease including the payment of Annual Gross Rent and Additional Rent.

(a) Landlord may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Annual Gross Rent, Additional Rent or any other sum as to which Tenant is in default or for any reasonable sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including any damages or deficiency in the re-letting of the Leased Premises or other reentry by Landlord.

(b) If Landlord uses, applies or retains the whole or any part of the Security Deposit, Tenant shall replenish it to the sum provided in this Section 3.7 within five (5) Business Days after being notified in writing by the Landlord of the amount due. Tenant shall be in default of this Lease if the amount due is not paid within the required time period.

(c) In the event of a sale or master leasing of the Building, or any part thereof, of which the Leased Premises form a part, Landlord shall have the right to transfer the security to the new landlord, and Landlord shall ipso facto be released by Tenant from all liability for the return of the Security Deposit. In such event, Tenant agrees to look solely to the new landlord for the return of the Security Deposit and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new landlord.

(d) Tenant covenants that it shall not assign or encumber the Security Deposit given to Landlord pursuant to this Lease. Neither Landlord, its successors or assigns shall be bound by any such assignment or encumbrance or any attempted assignment or encumbrance. The Security Deposit shall not be used as any part of the Annual Gross Rent or Additional Rent by Tenant. Landlord will not be obligated to pay Tenant interest on the Security Deposit, nor to segregate the Security Deposit from Landlord's other funds.

(e) In the event that Tenant shall fully and faithfully comply with all the terms, covenants and conditions of this Lease, any part of the Security Deposit not used or retained by Landlord in accordance with the terms of this Lease shall be returned to Tenant after the expiration of the Lease and after delivery of exclusive possession of the Leased Premises to Landlord.

## ARTICLE 4. OCCUPANCY AND USE

4.1. Use. Tenant warrants and represents to Landlord that the Leased Premises shall be used and occupied solely for the purposes set forth in Article 1 and for no other purposes whatsoever. Tenant shall occupy the Leased Premises, conduct its business and control its agents, employees, invitees and visitors (to the extent such invitees and visitors are within the Leased Premises) in such a manner as is lawful, reputable and will not create a nuisance. Tenant shall not permit any operation which emits any excessive or offensive odor or matter which intrudes into other portions of the Building, use any apparatus or machine which makes undue noise or causes undue vibration in any portion of the Building or otherwise materially interfere with, annoy or disturb any other lessee in its normal business operations or Landlord in its management of the

Building. Tenant shall neither permit any waste on the Leased Premises nor allow the Leased Premises to be used in any way which would, in the reasonable opinion of Landlord, be extra hazardous on account of fire or which would in any way increase or render void the fire insurance on the Building. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business in the Leased Premises, Tenant shall, at its expense, duly procure and thereafter maintain such license or permit and shall at all times comply with the terms and conditions of same. Tenant shall not at any time knowingly suffer the Leased Premises to be used or occupied in violation of (i) the Certificate of Occupancy for the Leased Premises or for the Building, (ii) any of the provisions of this Lease, or (iii) zoning ordinances, and rules and regulations of governmental and quasi governmental authorities having jurisdiction over the Building.

4.2. Signs. Except as expressly permitted hereinafter, Tenant shall not place any signs or other advertising matter or material on the exterior of the Building, anywhere upon the Common Areas, or in any portion of the interior of the Leased Premises which is visible beyond the Leased Premises, except those signs submitted to Landlord in writing and approved by Landlord in writing, which approval shall not be unreasonably withheld. If any prohibited sign, advertisement or notice is exhibited by Tenant, Landlord shall have the right to remove the same, and Tenant shall pay upon demand any and all expenses incurred by Landlord in such removal, together with interest thereon at the Default Rate.

4.3. Compliance with Laws, Rules and Regulations. Tenant, at Tenant's sole cost and expense, shall comply with all present and future laws, ordinances, orders, and rules and regulations of all state, federal, municipal, and local governments, departments, commissions, and boards having jurisdiction over the Leased Premises, Tenant's business, or any activity or condition on or about the Leased Premises, including, without limitation, all environmental laws and any other laws relating to the improvements on the Leased Premises or the air in and around the Leased Premises (collectively, the "Laws"). Tenant warrants that its business and all activities to be conducted or performed in, on, or about the Leased Premises shall comply with all of the Laws. Tenant agrees to change, reduce, or stop any such activity, or install necessary equipment, safety devices, pollution control systems, or other installations at any time during the Term hereof to so comply. Without limitation to the foregoing, Tenant agrees:

(a) If, during the Term hereof, due to the Tenant's use of the property, Landlord or Tenant is required to alter, convert, or replace the HVAC system serving the Leased Premises in order to comply with any of the Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Tenant acknowledges and agrees that such costs of any such conversion or replacement, including without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Leased Premises to accommodate any new equipment, shall be paid by Tenant.

(b) Tenant will comply with the reasonable rules and regulations of the Building adopted from time to time by Landlord, a current copy of which are set forth on Exhibit "B" attached to this Lease. Landlord shall have the right at all times to change and amend the rules and regulations in any reasonable manner as may be deemed advisable for the safety, care, cleanliness, preservation of good order and operation or use of the Building or the Leased Premises. The Rules and Regulations, as changed in accordance with this section from time to time, are hereinafter called the "Rules and Regulations."

4.4. Warranty of Possession. Landlord warrants that it has the right and authority to execute this Lease. Landlord covenants and agrees that, upon Tenant's paying on a monthly installment basis the Annual Gross Rent and any Additional Rent required hereunder and performing all of the other covenants herein on its part to be performed, Tenant shall and may peaceably and quietly hold and enjoy the Leased Premises without hindrance by Landlord or persons claiming through or under Landlord (including, without limitation, any mortgagee of Landlord), subject to the terms, covenants and conditions of this Lease. Landlord shall not be responsible for the acts or omissions of any other lessee or third party not claiming through or under Landlord that may interfere with Tenant's use and enjoyment of the Leased Premises.

4.5. Inspection. Landlord and Landlord's agents shall have the right during Normal Business Hours to

enter the Leased Premises, to examine the areas of same designated by Tenant as "public," and to show such designated public areas to prospective purchasers or lenders of the Building. Tenant shall allow Landlord entry into the non-public portions of the Leased Premises upon 24 hours notice by Landlord to Tenant and upon execution of Tenant's standard Non-Disclosure Agreement by each person desiring such entry. Normal Business Hours for the Building are 8:00 a.m. to 5:00 p.m. each Business Day. Upon reasonable prior notice and upon execution of Tenant's standard Non-Disclosure Agreement by each person desiring such entry (except in the case of an emergency), Landlord and Landlord's agents shall have the right outside of Normal Business Hours to enter the Leased Premises to make such repairs or alterations as required under this Lease or as Landlord may reasonably deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Leased Premises that may be required therefore without the same constituting an eviction of Tenant in whole or in part, and the Rent reserved herein shall in no way abate while said repairs or alterations are being made; provided, however, if the necessity of such repairs do not arise due to the fault of Tenant and Tenant is prevented from operating in the Leased Premises in whole or in part, then in such event the Annual Gross Rent shall be proportionately abated during said period. During the twelve (12) months prior to the expiration of the Term hereof, Landlord may during Normal Business Hours exhibit the Tenant-designated public portions of the Leased Premises to prospective tenants. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Leased Premises or the Building or any part thereof, except as otherwise herein specifically provided. Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Tenant-designated public areas of the Leased Premises. Tenant shall not change Landlord's lock system unless Tenant provides Landlord with a pass key, or in any other manner prohibit Landlord from entering the Tenant-designated public areas of the Leased Premises. Landlord shall have the right to use any and all means which Landlord may deem proper to open any door in an emergency without liability therefor.

## ARTICLE 5. UTILITIES AND SERVICE

5.1. Building Services. Landlord shall provide routine maintenance and painting to the exterior of the Building. Landlord will not be liable to Tenant or any other person, for direct or consequential damage, or otherwise, for any failure of Tenant to obtain any heat, air conditioning, lighting, or other service Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply such services. Landlord reserves the right temporarily to discontinue such services, or any of them, at such times as may be necessary by reason of accident, repairs, alterations or improvements, strikes, lockouts, riots, acts of God, governmental preemption in connection with a national or local emergency, any rule, order or regulation, conditions of supply and demand which make any product unavailable, Landlord's compliance with any mandatory or voluntary governmental energy conservation or environmental protection program, or any other happening beyond the control of Landlord. Except as expressly provided hereinafter, Landlord will not be liable for damages to persons or property or for injury to, or interruption of, business for any discontinuance permitted under this Section, nor will such discontinuance in any way be construed as an eviction of Tenant or cause an abatement of rent or operate to release Tenant from any of Tenant's obligations under this Lease. Landlord reserves the right from time to time to make changes in the services provided by Landlord to the Building provided such changes do not detract from the level of the existing services. Landlord shall not be liable for any damages to persons or property or for injury to, or interruption of, business arising from the interruption of any utility service to the Building. If there is a failure by Landlord to furnish the services specified in this Section, and further provided such interruption is not due to Tenant's negligence or willful misconduct, and further provided, should the unavailability of such service render all or any portion of the Leased Premises unusable by Tenant for Tenant's permitted Use, Tenant may, after and upon the giving of five (5) days written notice to Landlord, deduct the rent for that portion of the Leased Premises which is so unusable provided same is not due to reasonable delays. Landlord reserves the right from time to time to make changes in the services provided by Landlord to the Building provided such changes do not detract from the level of the existing services.

5.2. Security and Theft or Burglary. Landlord shall not be liable to Tenant for losses to Tenant's property or personal injury caused by criminal acts or entry by unauthorized persons (other than the gross negligence or willful misconduct of Landlord, or Landlord's agents or contractors) into the Leased Premises or the Building.

5.3. Janitorial Service. Tenant shall keep the interior of the Leased Premises cleaned and well maintained.

5.4. Utilities. Tenant shall pay all electrical, gas, water, heat, sewer, telephone, and any other utility charges for service to the Leased Premises. Tenant shall keep the Leased Premises sufficiently heated to avoid the freezing or bursting of all pipes therein. Tenant shall pay all additional improvement costs occasioned by high electrical consumption electrodata processing machines, advanced telecommunications equipment, computers and other equipment of high electrical consumption, including without limitation, the cost of installing, servicing and maintaining any special or additional inside or outside riders, wiring or lines, meters or submeters, transformers, poles, or air conditioning costs. Landlord shall furnish all electrical and gas services to the common areas, at Landlord's expense.

## ARTICLE 6. REPAIRS AND MAINTENANCE

6.1. Landlord Repairs. Upon Tenant taking possession of the Leased Premises, Tenant hereby acknowledges that it has accepted the Premises "As Is". Landlord shall not be required to make any improvements, replacements or repairs of any kind or character to the Leased Premises or the Building during the term of this Lease except as are set forth in this Lease. Landlord shall maintain only (a) the roof, structure, columns, exterior walls, foundation, in sound, watertight condition and good state of repair; and (b) the sidewalks, curbs, driveways, parking areas (if any) and landscaping in good condition and repair, open and free of debris or other obstruction. Landlord shall not be liable to Tenant, except as expressly provided in this Lease, for any damage or inconvenience, and Tenant shall not be entitled to any abatement or reduction of rent by reason of any repairs, alterations or additions made by Landlord under this Lease. Tenant understands and agrees that Landlord may, at any time or from time to time during the term of this Lease, perform substantial renovation work in and to the Building or the mechanical systems serving the Building (which work may include, but need not be limited to, the repair or replacement of the Building's exterior facade, electrical systems, air conditioning and ventilating and other systems), any of which work may require access to the same from within the Leased Premises. Tenant agrees that:

(a) Landlord shall have access to the Leased Premises at all reasonable times, subject to the restrictions set forth in Section 4.5, upon reasonable notice, for the purpose of performing such work; and

(b) Landlord shall incur no liability to Tenant, nor shall Tenant be entitled to any abatement of rent on account of any noise, vibration, or other disturbance to Tenant's business at the Leased Premises (provided that Tenant is not denied access to said Leased Premises) which shall arise out of said access by Landlord or by the performance by Landlord of the aforesaid renovations at the Building.

Landlord shall use reasonable efforts (which shall not include any obligation to employ labor at overtime rates) to avoid disruption of Tenant's business during any such entry upon the Leased Premises by Landlord. Landlord shall not be liable to Tenant, except as expressly provided in this Lease, for any damage or inconvenience, and Tenant shall not be entitled to any abatement or reduction of rent by reason of any repairs, alterations or additions made by Landlord under this Lease.

6.2. Tenant Repairs. Tenant, at Tenant's expense, shall provide for storage disposal of all biomedical and hazardous materials and waste delivered, generated from or stored within the Leased Premises, all in strict compliance with all Federal, State and local rules, regulations, laws, ordinances and guidelines. Tenant shall not suffer any damage, waste or deterioration to occur to the Leased Premises and shall maintain the interior non-structural portions of the Leased Premises and the fixtures and appurtenances therein in good repair and clean and sightly condition, and shall make all repairs necessary to keep them in good working order and condition (including structural repairs when those are necessitated by the negligence or willful misconduct of Tenant or its agents, employees, invitees, licensees or visitors) ordinary wear and tear and Acts of God excepted, and subject to the provisions of Articles 8 and 10 hereof. All repairs, replacements and restorations made by Tenant shall be equal in quality and class to the originals thereof and shall be completed in compliance with applicable law. Tenant covenants that any repairs or replacements (as the case may be) required by the terms of this Lease to be made by Tenant shall be commenced and completed expeditiously;

provided, however, if Tenant fails to make the repairs or replacements, in an emergency promptly after notice, or otherwise fails to make the repairs or replacements within thirty (30) days after notice or in the event that such repair or replacement is of such a nature as cannot with diligent effort be cured within said thirty (30) day period, Tenant shall have failed to commence to cure within said period or failed to diligently prosecute remedial efforts to completion within a reasonable time thereafter, then Landlord may, at its option, make the repairs or replacements, and the cost of such repairs or replacements shall be charged to Tenant as Additional Rent and shall become payable by Tenant with the payment of the rent next due hereunder.

6.3. Request for Repairs. Tenant must notify Landlord of its request for repairs or maintenance to the Leased Premises that are the responsibility of Landlord pursuant to any provision of this Lease and such request must be made to Landlord at the address provided for in the notice section.

6.4. Tenant Damages. At the termination of this Lease, by lapse of time or otherwise, Tenant shall deliver the Leased Premises to Landlord in as good condition as existed at the Commencement Date of this Lease, ordinary wear and tear excepted. Landlord may require Tenant to restore the Leased Premises to the condition of the premises at the time the original lease was executed, ordinary wear and tear excepted. The reasonable cost and expense of any repairs necessary to restore the condition of the Leased Premises, as documented by Landlord with reasonable documentation of such costs, shall be borne by Tenant.

## ARTICLE 7. ALTERATIONS AND IMPROVEMENTS

7.1. Leasehold Improvements. If construction to the Leased Premises is to be performed by Landlord prior to or during Tenant's occupancy, Landlord will complete the construction of the improvements to the Leased Premises in accordance with plans and specifications agreed to by Landlord and Tenant. Notwithstanding the foregoing, Tenant shall not undertake any alterations or improvements to any portion of the Leased Premises or the Building which may cause or create penetrations to the roof, ceiling or floors thereof. Within seven days of receipt of plans and specifications, Tenant shall execute a copy of the plans and specifications and, if applicable, change orders setting forth the amount of any costs to be borne by Tenant. In the event Tenant fails to execute the plans and specifications and change order within the seven day period, Landlord may, at its sole option, declare this Lease canceled or notify Tenant that the Annual Gross Rent shall commence on the completion date even though the improvements to be constructed by Landlord may not be complete. Any changes or modifications to the approved plans and specifications shall be made and accepted by written change order or agreement signed by Landlord and Tenant and shall constitute an amendment to this Lease.

7.2. Tenant Improvements. Tenant acknowledges that in the event Tenant intends to undertake improvements or alterations to the Leased Premises following the Effective Date, at its sole expense, Tenant must obtain the prior written consent and approval of Landlord to such improvements or alterations ("Alterations"), which consent shall not be unreasonably denied. Landlord's approval of any such Alterations may also be conditioned upon Landlord's approval of plans, contractors, contractor lien indemnification, and terms of access for construction. Landlord may require the plans to be prepared by a licensed Architect. Any Alterations to the Leased Premises made by Tenant shall at once become the property of Landlord and shall be surrendered to Landlord upon the termination of this Lease provided, however, Landlord, at its option, may require Tenant to remove and/or repair any Alterations in order to restore the Leased Premises to the condition existing at the time Tenant took possession, all costs of removal and/or repair and restoration to be borne by Tenant. This clause shall not apply to moveable equipment or furniture owned by Tenant which may be removed by Tenant at the end of the term of this Lease if Tenant is not then in default and if such equipment and furniture are not then subject to any other rights, liens and interests of Landlord. Following the completion of the initial leasehold improvements, all Alterations must be in accordance with the requirements of this Lease. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of the Alterations and for final approval thereof upon completion and shall cause the Alterations to be performed in a good and workmanlike manner in accordance with the requirements of all applicable governmental authorities. All Alterations shall be diligently performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the original installations of the Leased Premises.

7.3. Liens. Nothing contained in this Lease shall be construed as a consent on the part of the Landlord to subject the estate of Landlord to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the Landlord's estate shall not be subject to such liability. Tenant shall strictly comply with the Construction Lien law of the State of Florida, as set forth in Chapter 713, Florida Statutes. Notwithstanding the foregoing, Tenant, at its expense, shall cause any lien filed against the Tenant's interest under this Lease, the Leased Premises, the Building or the Parking Area for work, services or materials claimed to have been furnished to or for the benefit of Tenant (other than on account of the Leasehold Work) to be satisfied or transferred to bond within twenty (20) days after Tenant's having received notice thereof. In the event that Tenant fails to satisfy or transfer to bond such claim of lien within said twenty (20) day period, the Landlord may do so and thereafter charge the Tenant as additional rent, all costs incurred by the Landlord in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees plus interest thereon at the Default Rate. Further, the Tenant agrees to indemnify, defend, and save the Landlord harmless from and against any damage or loss incurred by the Landlord as a result of any such mechanic's Claim of Lien. This Section shall survive the termination of this Lease.

## ARTICLE 8. CASUALTY

8.1. Substantial Destruction. If the Leased Premises shall be substantially damaged by fire, windstorm, or otherwise during the Lease Term, Landlord shall have the right to either terminate this Lease, provided that notice thereof is given to Tenant not later than one hundred twenty (120) days after such damage or destruction, or to proceed to repair such damage and restore the Leased Premises to substantially their condition at the time of such damage (but only to the extent of Landlord's original obligation to construct pursuant hereto and to the extent only of proceeds received by Landlord from its insurers). Tenant, at its sole cost and expense, shall repair and restore whatever trade fixtures, equipment and improvements it had installed prior to the damage or destruction. The terms "substantially damaged" and "substantial damage," as used in this Article, shall have reference to damage of such a character as cannot reasonably be expected to be repaired or such that the Leased Premises cannot be restored within ninety (90) days after the commencement of construction.

8.2. Partial Destruction. If during the Term hereof the Leased Premises shall be partially damaged (as distinguished from "substantially damaged") by fire or other casualty, Landlord shall forthwith proceed to repair such damage and restore the Leased Premises to substantially their condition at the time of such damage (but only to the extent of Landlord's original obligation to construct pursuant hereto and to the extent only of proceeds received by Landlord from its insurers), except Tenant, at its sole cost and expense, shall repair and restore whatever trade fixtures, equipment and other improvements it had installed prior to the damage or destruction.

8.3. Abatement of Rent. If the provisions of Subsection 8.1 or 8.2 of this Article 8 shall become applicable, the Annual Gross Rent and all other charges specified in this Lease shall be abated or equitably reduced proportionately during any period in which, by reason of such damage or destruction, there is substantial interference with the operation of the business of Tenant in the Leased Premises, and such abatement or equitable reduction shall continue for the period commencing with such destruction or damage and ending with the completion by Landlord of all work or repair and/or restoration that is necessary to cause the Leased Premises to be restored to substantially their condition at the time of such damage as indicated in paragraph 8.2 of this lease. In the event of the termination of this Lease pursuant to this Section 8, this Lease, and the Term hereof, shall cease and come to an end as of the date of such damage or destruction. Any Annual Gross Rent or other charges paid in advance by Tenant shall be promptly refunded by Landlord.

8.4. Landlord's Limitation of Obligation. Despite anything contained in this Lease to the contrary, and without limiting Landlord's right or remedies hereunder:

(a) If damage or destruction occurs to the Leased Premises or any part thereof by reason of any cause in respect of which there are no proceeds of insurance available to Landlord, or

(b) If the proceeds of insurance are insufficient to pay Landlord for the costs of rebuilding or making fit the Leased Premises, or

(c) If any mortgagee or other person entitled to the proceeds of insurance does not consent to the payment to Landlord of such proceeds for such purpose, or

(d) If in Landlord's reasonable opinion any such damage or destruction is caused by any fault, neglect, default, negligence, act, or omission of Tenant, or those for whom Tenant is in law responsible, or any other person entering upon the Leased Premises under express or implied invitation of Tenant,

then Landlord may, without obligation or liability to Tenant, terminate this Lease on 30 days' written notice to Tenant and all Rent shall be adjusted as of, and Tenant shall vacate and surrender the Leased Premises on, such termination date.

8.5. Landlord's Right to Terminate. In the event that the Building has been damaged or destroyed by fire or other casualty to the extent that the cost of restoration of the Building will exceed a sum constituting sixty percent (60%) of the total replacement cost thereof, Landlord shall have the right to terminate this Lease provided that notice thereof is given to Tenant not later than sixty (60) days after such damage or destruction and Landlord elects not to restore the Building and terminates all other leases for space in the Building.

## ARTICLE 9. INSURANCE

9.1. Tenant's Insurance. Tenant shall, at its sole expense, maintain in effect at all times during the Term insurance coverage with limits not less than those set forth below with insurers licensed to do business in the state of Florida: a) Workers Compensation Insurance—statutory limits as required by State law, and as same may be amended from time to time; b) Employer's Liability Insurance—minimum limit $500,000.00; and c) Commercial General Liability Insurance, with a combined single limit of $1,000,000 per occurrence and general aggregate limits of $2,000,000.00. These policies shall be endorsed to include Landlord and Landlord's mortgagee, if any, as an additional insured, state that the insurance is primary over any insurance carried by Landlord, and the commercial general liability policy shall be written on a standard Insurance Services Office, Inc. (ISO) policy form with a 1988 or later edition date or its equivalent. The policy must be written on an occurrence basis and include Coverage A (Bodily Injury and Property Damage Liability), Coverage B (Personal and Advertising Injury Liability) and Coverage C (Medical Payments). Upon Tenant's default in obtaining or delivering the policy or certificate for any such insurance or Tenant's failure to pay the charges therefor, Landlord may, upon ten (10) days notice to Tenant, procure or pay the reasonable charges for any such policy or policies (for not more than a 12 month period) and charge the Tenant therefor plus interest thereon at the Default Rate as additional rent.

9.2. Tenant's Personal Property Insurance. Tenant shall at all times during the term hereof and at its cost and expense, maintain in effect policies of insurance covering all of Tenant's personal property, trade fixtures and equipment located in the Leased Premises, in an amount equal to their full replacement value, providing protection against any peril included within the standard classification of "Fire and Extended Coverage", together with insurance against sprinkler damage, vandalism, theft and malicious mischief. The proceeds of such insurance, so long as this Lease remains in effect, shall be used to repair or replace the personal property, trade fixtures and equipment so insured.

9.3. Landlord's Insurance. Landlord shall maintain at all times during the term of this Lease standard all-risk fire and casualty insurance, covering the Building in amounts at least equal to the full replacement cost of the Building at the time in question, but in no event less than such coverage as is required to avoid co-insurance provisions; and b) comprehensive public liability insurance and such other insurance coverage as is customarily carried in respect of comparable buildings.

9.4. General Requirements. All policies of insurance required under this article shall provide that they will not be cancelled upon less than thirty (30) days prior written notice to Landlord and Tenant. Tenant shall furnish to Landlord a certificate or certificates of insurance certifying that the insurance coverage required is in force, upon request. The coverage shall be issued by companies licensed to do business in the State of Florida and rated A:VIII or better in Best's Insurance Guide (or similar rating in an equivalent publication if no longer published) and shall otherwise be reasonably satisfactory to the parties. Not less than thirty (30) days

prior to expiration of the coverage, renewal policies or certificates of insurance evidencing renewal shall be provided. Any insurance required by the terms of this Lease may be under a blanket policy (or policies) covering other properties of Landlord, Tenant and/or related or affiliated corporations. If such insurance is maintained under a blanket policy, the respective party shall procure and deliver to the other party a statement from the insurer or general agent of the insurer setting forth the coverage maintained and the amount thereof allocated to the risk intended to be insured hereunder.

## ARTICLE 10. INDEMNIFICATION

10.1. Tenant's Indemnification. Tenant shall indemnify, defend and save Landlord harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by gross negligence or willful misconduct of Tenant, its agents, contractors, employees, servants, subtenants or concessionaires. In case Landlord shall be made a party to any such litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and pay all costs and reasonable attorney's fees incurred by Landlord in connection with such litigation, and any appeals thereof.

10.2 Landlord's Indemnification. Landlord shall indemnify, defend and save Tenant harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to or destruction of property occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, employees, servants, subtenants or concessionaires. In case Tenant shall be made a party to any such litigation commenced by or against Landlord, then Landlord shall protect and hold Tenant harmless and pay all costs and reasonable attorney's fees incurred by the Tenant in connection with such litigation, and any appeals thereof.

10.3 Notwithstanding the above, Landlord Not Liable. Except for the gross negligence of intentional misconduct of Landlord or it's agents, employees or contractors, Tenant agrees Landlord shall not be liable to Tenant, Tenant's employees, agents, invitees, licensees or visitors, or to any other person, for an injury to person or damage to property on or about the Leased Premises caused by any act or omission of Landlord, its agents, servants or employees, or of any other person entering upon the Leased Premises under express or implied invitation by Tenant.

## ARTICLE 11. CONDEMNATION

11.1. Substantial Taking. If, after the Commencement Date and before the termination of this Lease: (i) any portion of the Leased Premises is taken by eminent domain or conveyed in lieu thereof; or (ii) as a result of a taking by eminent domain or the action of any public or quasi-public authority or a conveyance in lieu thereof, the means of ingress or egress to and from the Building is so permanently altered as to materially and adversely affect the flow of traffic in, to, from or about the Building; then, in any of the foregoing events, the Lease Term shall, at the option of Tenant, cease and terminate as of the day possession shall be taken by the acting governmental or quasi-governmental authority (the "Date of Taking"). Such option to terminate shall be exercisable by Tenant giving written notice to Landlord on or before thirty (30) days after the Date of Taking, which notice shall provide for a termination date (the "Termination Date") not later than ninety (90) days after

the Date of Taking and Tenant shall pay Rent up to the Termination Date, and Landlord shall refund such Annual Gross Rent and other payments as shall have been paid in advance and which cover a period subsequent to the Termination Date. In the event Tenant does not terminate this Lease, Landlord shall promptly and diligently restore the Building and the Leased Premises and the Building and Common Areas to as near to their condition prior to such taking or conveyance as is reasonably possible, and, during the course of such restoration, there shall be a fair and equitable abatement of all Annual Gross Rent, taking into account the extent to which Tenant shall be required to close down all or a portion of its operations until restoration has been completed; and, after such restoration, there shall be fair and equitable abatement of Annual Gross Rent on a permanent basis, taking into account the reduction in the size of the Leased Premises, reduction in Common Areas, and the like. If fifty percent (50%) or more of the rentable area in the Building is taken by eminent domain or conveyed in lieu thereof, then Landlord shall have the right to terminate this Lease by giving written notice to Tenant on or before thirty (30) days after the Date of Taking; provided that Landlord also terminates all leases for premises within the Building.

11.2. Restoration. If any portion of the Leased Premises shall be so taken or conveyed and this Lease is not terminated, then the Lease Term shall cease only with respect to that portion of the Leased Premises so taken or conveyed, as of the day possession shall be taken, and Tenant shall pay Annual Gross Rent and all other payments up to that day, with an appropriate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date of the taking of possession and, thereafter, the Annual Gross Rent and all other payments shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations so as to constitute the remaining portion of the Leased Premises a complete architectural unit. It is understood and agreed that Tenant shall not have the right to claim damages for the value of its leasehold estate, nor shall Tenant have the right to share in any award granted to Tenant, nor shall Tenant have the right to claim damages that in any way may be in derogation of Landlord's award.

11.3 The Award. All compensation awarded for any taking, whether for the whole or a portion of the Leased Premises, shall be the sole property of Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the leasehold or for diminution in the value of, or loss of the fee or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right and title to and interest in any and all such compensation; provided, however, Landlord shall not be entitled to and Tenant shall have the sole right to retain any separate award made by the appropriating authority to tenant for the cost of removal of leasehold improvements, fixtures, and personalty improvements installed in the Premises by, or at the expense of, Tenant and for relocation expenses, and any separate award made by the appropriating authority directly to Tenant.

## ARTICLE 12. ASSIGNMENT OR SUBLEASE

12.1. Landlord Assignment. Landlord shall have the right to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease and in the Building. Any such sale, transfer or assignment shall operate to release Landlord from any and all liabilities under this Lease arising after the date of such sale, assignment or transfer, provided such transferee or assignee assumes such liabilities in writing. The acceptance of rent by any such transferee or assignee shall constitute assumption of such liabilities.

12.2. Tenant Assignment and Subletting.

(a) Tenant shall not assign, in whole or in part, this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise or mortgage, encumber, or pledge the same, or sublet the Leased Premises, in whole or in part, or suffer or permit the occupation of all or any part thereof by any other party, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, except Tentant may assign this Lease if Tenant undergoes a change of control. In no event shall any such assignment or sublease ever release Tenant or any guarantor from any obligation or liability hereunder. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

(b) If Tenant desires to assign or sublet all or any part of the Leased Premises to any party, it shall so notify Landlord at least thirty days in advance of the date on which Tenant desires to make such

assignment or sublease. Tenant will simultaneously with such request give Landlord (i) the name and address of the proposed assignee or subtenant, (ii) the terms of the proposed assignment or sublease, (iii) reasonably satisfactory and complete information about the nature, financial condition, business and business history of the proposed assignee or subtenant, and its proposed initial use of the Leased Premises, and (iv) a fee in the amount of $1,000.00 to reimburse Landlord for all its expenses including, without limitation, reasonable attorneys fees associated with Tenant's request to assign, sublet or otherwise encumber the Leased Premises under the terms of the Lease. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Within fifteen days after Landlord's receipt of Tenant's proposed assignment or sublease and all required information concerning the proposed sublessee or assignee, Landlord shall have the following options: (1) as to a requested sublease with a sublease term that coincides with ninety-five percent or more of the remaining term of this Lease, cancel this Lease as to the Leased Premises or portion thereof proposed to be sublet (provided, however, that Tenant shall have ten (10) days to nullify Landlord's cancellation of this Lease by written notice to Landlord that it is withdrawing the sublease request); (2) consent to the proposed assignment or sublease, and, if the rent due and payable by any assignee or sublessee under any such permitted assignment or sublease (or a combination of the rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the rent payable under this Lease for such space, Tenant shall pay to Landlord all such excess rent and other excess consideration, less Tenant's reasonable expenses incurred in connection with such subletting, including without limitation, reasonable brokerage commissions, improvements allowances, and alteration costs, within ten days following receipt thereof by Tenant; or (3) refuse, in Landlord's reasonable judgment, to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised unless Landlord gives Tenant written notice providing otherwise. Upon the occurrence of an event of default, if all or any part of the Leased Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Lease or provided by law may, at its option, collect directly from the assignee or sublessee all rents becoming due to Tenant by reason of the assignment or sublease. Any collection directly by Landlord from the assignee or sublessee shall not be construed to constitute a novation or a release of Tenant or any guarantor from the further performance of its obligations under this Lease. Tenant shall deliver to Landlord within twenty (20) days after any assignment or subletting a copy of the executed assignment or sublease agreement. Any assignment or sublease shall provide that the assignee or subtenant shall comply with all applicable terms and conditions of this Lease to be performed by Tenant hereunder. The permitted use of the Leased Premises shall not change in connection with any assignment or sublease.

## ARTICLE 13. SUBORDINATION AND ATTORNMENT

13.1. Rights of Mortgagee. Tenant acknowledges and agrees that this Lease shall be subject and subordinate to the lien of all existing and future mortgages on the Leased Premises and shall, within 15 days of Landlord's request, execute such subordination agreements as may be submitted by the holders of such mortgages. Tenant, upon request of the lienholder, will agree that, if such lienholder succeeds to the interest of Landlord, Tenant will recognize said lienholder (or successor in interest of the lienholder) as its landlord under the terms of this Lease.

## ARTICLE 14. LANDLORD'S LIEN

14.1. Uniform Commercial Code. This Lease is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code of the state in which the Leased Premises are situated. Landlord, in addition to the rights prescribed in this Lease and by law, shall have all of the rights, titles, liens and interests in and to Tenant's property (but expressly excluding any of Tenant's interests in intellectual property, product inventory, raw materials, and human tissue in any form), now or hereafter located upon the Leased Premises, which may be granted a secured party, as that term is defined, under the Uniform Commercial Code to secure to Landlord payment of all sums due and the full performance of all Tenant's covenants under this Lease. Tenant will on request execute and deliver to Landlord a financing statement for the purpose of perfecting Landlord's security interest under this Lease or Landlord may file a financing statement without the Tenant's signature. Unless otherwise provided by law and for the purpose of exercising any right pursuant to this section, Landlord and Tenant agree that reasonable notice shall be met if such

notice is given by ten days written notice, certified mail, return receipt requested, to Landlord or Tenant at the addresses specified herein.

## ARTICLE 15. DEFAULT AND REMEDIES

15.1. Default by Tenant. The following shall be deemed to be events of default by Tenant under this Lease: (i) Tenant shall fail to pay any installment of Annual Gross Rent or any other Additional Rent, or any other charge or assessment against Tenant pursuant to the terms hereof and such failure to pay shall continue for more than ten (10) days after the same is due; (ii) Tenant shall fail to comply with any term, provision, covenant, agreement or warranty made under this Lease by Tenant, other than the payment of any installment of Annual Gross Rent or any other Additional Rent or other charge or assessment payable by Tenant, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant provided however that if such non-monetary default is of such a nature that it cannot through the exercise of diligent and reasonable efforts be cured within thirty (30) days, then Tenant shall not be in default in such instance if Tenant promptly commences and diligently pursues the cure of such non-monetary default to completion as soon as possible and in all events within ninety (90) days after such initial notice; (iii) a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's assets is filed against Tenant in any court pursuant to any statute either of the United States or of any state and Tenant fails to secure or diligently proceed to secure a discharge thereof within sixty (60) days, or if Tenant voluntarily files a petition in bankruptcy or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with creditors; or (iv) Tenant shall do or permit to be done anything which creates a lien upon the Leased Premises for work performed by, through or under Tenant which Tenant fails to remove or bond off within thirty (30) days after written notice thereof.

15.2. Remedies for Tenant's Default.

(a) Upon the occurrence of any event of default set forth in this Lease, Landlord, besides other rights or remedies that it may have and without prior notice (except as specified in Subsection 15.1 above), shall have the right to (i) terminate Tenant's right of continued possession of the Leased Premises and declare the entire remaining unpaid Rent for the balance of the then existing Term of this Lease to be immediately due and payable forthwith and take action to recover and collect the same either by distress or otherwise, but in the event Landlord is able to relet the Leased Premises during such periods from time to time, Tenant shall consent to such reletting and Tenant shall be entitled to a credit against such damages in the amount of the rents and other sums received by Landlord from any such reletting of the Leased Premises, less any reasonable costs incurred by Landlord in connection with the repossessing of the Leased Premises, including, without limitation, reasonable attorneys' fees, brokerage commissions and any costs of allowance, repairs or alterations, or (ii) terminate this Lease, in which event Tenant shall immediately surrender the Leased Premises to Landlord, or (iii) terminate Tenant's right of continued possession of the Leased Premises and from time to time, without terminating this Lease, relet the Leased Premises or any part thereof for the account and in the name of Tenant, for any such lease term or terms and conditions as Landlord, in its reasonable discretion, may deem advisable, and with the right to make alterations, additions and repairs to the Leased Premises deemed by Landlord to be necessary in conjunction with such reletting. Notwithstanding any other remedy set forth in this Lease, in the event Landlord has made rent concessions of any type or character, or waived any base rent, and Tenant fails to take possession of the Leased Premises on the commencement or completion date or otherwise defaults at any time during the term of this Lease, the rent concessions, including any waived base rent, shall be cancelled and the amount of the base rent or other rent concessions shall be due and payable immediately as if no rent concessions or waiver of any base rent had ever been granted. A rent concession or waiver of the base rent shall not relieve Tenant of any obligation to pay any other charge due and payable under this Lease including without limitation any sum due under Article 3. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by Landlord only by mailing or delivering written notice of such termination to Tenant, and no other act or omission of Landlord shall be construed as a termination of this Lease.

(b) Should Landlord terminate Tenant's right of possession of the Leased Premises pursuant to Subsection (a) (iii) above, then Tenant shall pay to Landlord, within ten (10) days of Landlord's demand, all

of the following: (i) any unpaid Rent and other charges to be paid by Tenant hereunder up to the date when Landlord shall have so terminated Tenant's right of possession, plus interest thereon at the Default Rate from the due date together with the total cost of brokerage commissions and initial leasehold or tenant improvements or allowances incurred by Landlord in connection with the execution of this Lease (prorated for the unexpired portion of the Term); (ii) the reasonable costs of recovering possession of the Leased Premises and any reasonable legal fees and expenses directly related to the breach, the recovery of possession, and the collection of unpaid Rent and other charges; (iii) the reasonable costs incurred by Landlord in repairing and restoring the Leased Premises to the condition which same were to have been surrendered to Landlord at the expiration of the Lease term or to a condition required to lease premises to a new tenant; (iv) the reasonable costs of removing any of Tenant's property from the Leased Premises and, if same be stored, the reasonable cost of transporting and storing same (if Landlord shall store such property in a Building then Landlord shall be entitled to a reasonable storage fee hereunder); and (v) all reasonable brokerage fees and commissions and allowances (prorated for the unexpired portion of the Term) incurred by Landlord in reletting the Leased Premises.

(c) Rents received by Landlord from any reletting pursuant to Subsection (a)(iii) above, shall be applied first to the payment of any of the items enumerated in Subsection (b) above, in such order as Landlord shall deem appropriate, and second to the payment of rent and other sums due and unpaid by Tenant hereunder as of the date of Landlord's receipt of said rents. The residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder.

(d) No such reletting of the Leased Premises by Landlord pursuant to Subsection (a) (iii) above shall be construed as an election on its part to terminate this Lease unless a notice of such intention be given by Landlord to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction; and notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach provided it has not been cured.

(e) Should Landlord at any time terminate this Lease for any breach pursuant to Subsection (a)(ii) above, then in addition to any other remedy Landlord may have by reason of such breach, Landlord shall have the right to recover from Tenant all or any of the following: (i) any unpaid rent and other charges to be paid by Tenant hereunder up to the date of termination, plus interest thereon at the Default Rate from the due date; (ii) the reasonable costs of recovering possession of the Leased Premises and collecting said arrearages in rent and other charges, including any reasonable legal fees and expenses directly related to the breach, the recovery of possession, and the collection of unpaid Rent and other charges to be paid by Tenant and the total cost of brokerage commissions and initial leasehold or tenant improvements or allowances incurred by Landlord in connection with the execution or renewal of this Lease (prorated for the unexpired portion of the Term); (iii) costs, as reasonably estimated by Landlord which would be incurred in repairing or restoring the Leased Premises to the condition in which the same were to have been surrendered to Landlord at the expiration of the Lease term; (iv) the reasonable costs of removing any of Tenant's property from the Leased Premises, and, if same be stored, the reasonable cost of transporting and storing same (if Landlord shall store such property in a Building then Landlord shall be entitled to a reasonable storage fee hereunder); (v) all brokerage fees and commissions (prorated for the unexpired portion of the Term) incurred by Landlord in reletting the Leased Premises; and (vi) compensation for the loss of profits occasioned by the breach and resultant termination of this Lease, which loss the parties agree shall be determined by calculating the total amount of Rent to be paid by Tenant, and any other charges to be paid by Tenant, as if this Lease had not been terminated.

(f) Landlord shall have the right to recover, in execution of judgment(s) rendered in legal proceedings or otherwise, either jointly or from time to time severally, the applicable sums specified in clauses (i) through (v) of Subsection (b) and clauses (i) through (vi) of Subsection (e), and Landlord's recovery of one or more of such sums shall not constitute a waiver of Landlord's right to recover from Tenant the remaining sum(s).

(g) Tenant hereby waives all rights of redemption, now or hereafter granted, to the extent such rights may be lawfully waived.

(h) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Annual Gross Rent, or other Additional Rent or other charges and assessments payable by Tenant and due to Landlord hereunder or of any damages accruing to Landlord by reason of violation of any of the terms, covenants, warranties and provisions herein contained. All of Tenant's and Landlord's obligations under this Section shall survive the termination of this Lease.

(i) Notwithstanding anything herein to the contrary, in the event that Tenant abandons the Leased Premises for a continuous period of three weeks or more for any reason other than casualty or condemnation or force majeure not relating to Tenant's business operations, Landlord shall have the sole and exclusive remedy to terminate this Lease without prior notice. "Abandon" means the vacating of all or substantially all of the Leased Premises by Tenant, when the Tenant is in default of the rental payments due under this Lease or any other material provision of this Lease.

15.3. Tenant's Bankruptcy. In addition to Landlord's remedies under this Article 15, Landlord may, at its sole discretion and without notice, invoke the following provisions:

(a) Upon a Tenant's bankruptcy, this Lease and all rights of Tenant hereunder shall automatically terminate with the same force and effect as if the date of any such event were the date stated herein for the expiration of the Term, and Tenant shall vacate and surrender the Leased Premises, but shall remain liable as herein provided. Landlord reserves any and all remedies provided herein or at law or in equity.

(b) If this Lease is not terminated in accordance with subsection (a) above because such termination is not allowed under the Bankruptcy Code (hereinafter defined), upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and as debtor in possession, and any trustee who may be appointed, agree:

(1) to perform promptly each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of a United States Bankruptcy Court or other United States Court of competent jurisdiction; or deemed rejected by operation of law, pursuant to 11 U.S.C. § 365(c)(4);

(2) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to all Annual Gross Rent and all other Additional Rent;

(3) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within thirty (30) days of the filing of a petition under any other Chapter;

(4) to give Landlord at least forty-five (45) days prior written notice of any proceeding relating to any assumption of this Lease;

(5) to give Landlord at least thirty (30) days prior written notice of any abandonment of the Leased Premises;

(6) to be deemed conclusively to have rejected this Lease in the event of the failure to comply with any of the above;

(7) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same; and

(8) that this is a "lease of real property" as such term is used in the Bankruptcy Code.

(c) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord hereunder, whether or not expressly denominated as Rent, shall constitute "rent" for the

purposes of Section 502(b)(7) of the Bankruptcy Code, including, without limitation, reasonable attorneys' fees incurred by Landlord by reason of Tenant's bankruptcy.

(d) Nothing contained in this Section 15.3 shall be deemed in any manner to limit Landlord's rights and remedies under the Bankruptcy Code, as presently existing or as may hereafter be amended. In the event that the Bankruptcy Code is interpreted or amended during the term of this Lease to so permit, or is superseded by an act so permitting, the following additional acts shall be deemed an event of default under this Lease: (i) if Tenant is adjudicated insolvent by the United States Bankruptcy Code or (ii) if a petition is filed by or against Tenant under the Bankruptcy Code and such petition is not vacated within one hundred twenty (120) days. In either of such events, this Lease and all rights of Tenant hereunder shall automatically terminate with the same force and effect as if the date of either such event were the date stated herein for the expiration of the Term, and Tenant shall vacate and surrender the Leased Premises, but shall remain liable as herein provided. Landlord reserves any and all rights and remedies provided herein or at law.

## ARTICLE 16. TENANT'S REPRESENTATIONS

16.1. Tenant's Representations. Tenant, in order to induce Landlord to enter into this Lease, hereby represents that: Tenant has full power and authority to conduct its business as presently conducted and to enter into this Lease; that this Lease has been duly authorized, executed and delivered by Tenant and constitutes and legal and binding obligation of Tenant; and that no litigation or proceedings (or threatened litigation or proceeding or basis therefore) exists which could materially and adversely affect the ability of Tenant to perform its obligations under this Lease or which would constitute a default on the part of Tenant under this Lease, or which would constitute such a default with the giving of notice or lapse of time, or both.

## ARTICLE 17. PERSONAL PROPERTY TAXES

17.1. Personal Property Taxes. Tenant shall be liable for all taxes levied against Tenant's furniture, equipment, supplies, trade fixtures and other personal property located in the Leased Premises, regardless of whether title to such improvements shall be held by Tenant or Landlord.

## ARTICLE 18. EARLY TERMINATION

18.1 Early Termination. Tenant may terminate this lease at any time after the first twelve (12) months of the Lease Term upon payment to Landlord of a sum equal to six months rent in which event both parties shall be released from any further liability or obligation hereunder.

## ARTICLE 19. MISCELLANEOUS

19.1. Waiver. Failure of Landlord or Tenant to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Landlord or Tenant shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth in Article 15 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy constitute forfeiture or waiver of any rent or damages accruing to Landlord or Tenant by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by Landlord or Tenant to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. Without limiting the generality of the foregoing, no action taken or not taken by Landlord or Tenant under the provisions of this Section or any other provision of this Lease (including, by way of example rather than of limitation, the Landlord's acceptance of the payment of rent after the occurrence of any event of default) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which either party hereto would otherwise have against the other party on account of such event of default under the provisions of this Lease or applicable law (each party hereto hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which the other party chooses not immediately to exercise some or all of its rights

on the occurrence of an event of default).

19.2. Attorney's Fees. In the event that it shall become necessary for either Landlord or Tenant to employ the services of attorneys to enforce any of their respective rights under this Lease or to collect any sums due to them under this Lease or to remedy the breach of any covenant of this Lease on the part of the other to be kept or performed, the nonprevailing party (Tenant or Landlord as the case may be) shall pay to the prevailing party such reasonable fees as shall be charged by the prevailing party's attorneys and paralegals for such services, including services at all trial and appellate levels and post judgment proceedings and such prevailing party shall also have and recover from the nonprevailing party (Landlord or Tenant as the case may be) all other costs and expenses of such suit and any appeal thereof or with respect to any postjudgment proceedings.

19.3. Successors. This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns.

19.4. Captions. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any section. The word "Landlord" and the pronouns referring thereto, shall mean, where the context so admits or requires, the persons, firm or corporation named herein as landlord or the mortgagee in possession of the land and building comprising the Lease Premises. Any pronoun shall be read in the singular or plural number and in such gender as the context may require. Except as otherwise provided in this Lease Agreement, the terms and provisions of this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19.5. Notice. Any notice, demand, consent, approval or other communication to be given to or served upon any party hereto, in connection herewith, must be in writing, and may be given by facsimile transmission, certified mail or guaranteed overnight delivery service, return receipt requested. If a notice is delivered by United States Mail, it shall be deemed to have been given and received two (2) days following the deposit of a certified letter containing such notice, properly addressed, with postage prepaid, with the United States Mail. If delivered by facsimile transmission or by guaranteed overnight delivery service, it shall be deemed to have been given and received the same day that the notice is faxed or delivered into the custody of the overnight delivery service. If the notice is given otherwise than by certified mail, facsimile transmission or guaranteed overnight delivery service, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Notices shall be given to the parties hereto at the following addresses:

To Landlord: Wigshaw, LLC
P.O. Box 1857
14026 NW US 441
Alachua, Florida 32616

To Tenant: Axogen Corporation
P.O. Box 357787
Gainesville, Florida 32635-7787

Either party hereto may, at any time by giving five (5) business days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

19.6. Severability. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application for such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19.7. Landlord's Liability. Tenant shall look solely to the estate and property of the Landlord in the Building for the collection of any judgment, or in connection with any other judicial process, requiring the payment of money by Landlord in the event of any default by Landlord with respect to any of the terms,

covenants and conditions of this Lease to be observed and performed by Landlord, and no other property or estates of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies and rights under this Lease. The provisions of this Section are not designed to relieve Landlord from the performance of any of its obligations hereunder, but rather to limit Landlord's liability in the case of a recovery of a money judgment against Landlord. The foregoing limitation shall not apply to or limit any injunctive or other equitable declaratory or other forms of relief which Tenant may be entitled to. The word "Landlord" as used in this Lease shall mean only the owner from time to time of Landlord's interest in this Lease. In the event of any assignment of Landlord's interest in this Lease, the assignor shall no longer be liable for the performance or observation of any agreements or conditions on the part of Landlord to be performed or observed subsequent to the effective date of such assignment provided the assignee specifically assumes all such obligations.

19.8. Estoppel Certificates. Tenant agrees at any time and from time to time, upon not less than fifteen (15) days prior written request of Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the date to which the rental and other charges have been paid in advance, if any, and whether or not any violations are in existence as of the date of said statement, that Tenant has accepted possession of the Leased Premises, the date on which the term commenced; and, as to whether, to the best knowledge, information and belief of the signer of such certificate, the other party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and as to any other fact or condition with respect to this Lease reasonably requested by the other party hereto or such other addressee, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the fee or mortgagee or assignee of any mortgage upon the fee.

19.9. No Recording. Tenant shall not record this Lease or any memorandum or short form hereof without the written consent and joinder of Landlord.

19.10. Waiver of Jury Trial. The parties hereto waive trial by jury in connection with any proceedings or counterclaims brought by either of the parties hereto against the other.

(a) All disputes arising in connection with this Agreement, including the interpretation, performance or non-performance of the Agreement, shall be resolved by binding arbitration in the State of Florida. All disputes shall be settled by one (1) arbitrator. Any such arbitration shall be conducted in the English language, shall be governed by the laws of the jurisdiction in which the arbitration is held. Any arbitration award shall be final and binding and no appeal shall lie therefrom. Judgment upon the award may be entered in any court of competent jurisdiction. Except for each Party's own attorneys' fees and any expenses incurred in producing its own witnesses, all other administrative expenses shall be divided as directed by the arbitrators.

(b) If either Party, notwithstanding the foregoing, should attempt either to resolve any dispute arising in connection with this Agreement in a court of law or equity or to forestall, preempt, or prevent arbitration of any such dispute by resort to the process of a court of law or equity, and such dispute is ultimately determined to be arbitral by such court of law or equity, the arbitrators shall include in their award an amount for the other Party equal to all of that other Party's costs, including legal fees, incurred in connection with such arbitral determination. Nothing in this 19.10 shall prevent a Party from seeking a remedy in a court of equity if money damages are not an adequate remedy, or in order to preserve the status quo pending an arbitration award.

19.11. Corporate Authority. If Tenant executes this Lease as a corporation, each of the persons executing this Lease on behalf of Tenant does hereby personally represent and warrant that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the state in which the Leased Premises are located, that the corporation has full right and authority to enter into this Lease, and that each person signing on behalf of the corporation is authorized to do so. In the event any representation or warranty is false, all persons who execute this Lease shall be liable, individually, as Tenant. Landlord, before it accepts and delivers this Lease Agreement, may require Tenant to supply it with a certified copy of the corporate resolution authorizing the execution of the Lease Agreement by Tenant. If Tenant is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), Tenant represents that

the ownership and power to vote its entire outstanding capital stock belongs to and is vested in the officer or officers executing this Lease Agreement or members of his, her or their immediate family. If there shall occur any change in the ownership and/or power to vote the majority of the outstanding capital stock of Tenant, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of Landlord, then Landlord shall have the option to terminate this Lease Agreement upon thirty (30) days' written notice to Tenant. Tenant shall have an affirmative obligation to notify immediately Landlord of any such change.

19.12. Entire Agreement. This instrument contains the entire and only agreement between the parties and no oral statement or representations or prior written matter not contained in this instrument shall have any force and effect. This Lease Agreement shall no be modified in any way except by a writing executed by both parties.

19.13. No Partnership. Landlord is not and shall not become by this Lease Agreement or by any rights granted or reserved herein a partner or joint venturer of or with Tenant in the conduct of Tenant's business or otherwise.

## ARTICLE 20. OTHER PROVISIONS

20.1. Hazardous and Biomedical Substances.

(a) Hazardous Substances. The term "Hazardous Substances," as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

(b) Tenant Restrictions. Tenant shall not cause or permit to occur:

(i) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Leased Premises, or arising from Tenant's use or occupancy of the Leased Premises, including, but not limited to, soil and ground water conditions; or

(ii) The , generation, , manufacture, refining, or production, of any Hazardous Substance, under, or about the Leased Premises, \ . Notwithstanding the foregoing, Landlord acknowledges that Tenant intends to use, store, process, and dispose of biomedical materials, wastes and human tissue in conjunction with its use of the Leased Premises and agrees that such activities shall not be deemed a default under this Lease provided Tenant complies with all applicable rules and regulations governing such activities. In addition, Tenant and its agents and employees shall properly and securely enclose and contain any such Hazardous Substances or biomedical materials or waste when transporting the same on, across or through any location in or about the Building.

(c) Environmental Clean-up.

(i) Tenant shall, at Tenant's own expense, comply with all Laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances and biomedical wastes and materials.

(ii) Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities") under the Laws.

(iii) Should any Authority or any third party demand that a cleanup plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Leased Premises (unless such cleanup is

required as a result of actions of the Landlord or persons acting on behalf of or engaged by Landlord), or which arises at any time from Tenant's use or occupancy of the Leased Premises, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such cleanup plans.

(iv) Tenant shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is reasonably requested by Landlord. If Tenant fails to fulfill any duty imposed under this Section (c) within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Laws to the Leased Premises and Tenant's use thereof, and for compliance therewith, and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any Law shall constitute a waiver of any of Tenant's obligations under this Section (c).

(v) Tenant's obligations and liabilities under this Section (c) shall survive the expiration of this Lease.

(d) Tenant's Indemnity.

(i) Tenant shall indemnify, defend, and hold harmless Landlord, the manager of the property, and their respective officers, directors, beneficiaries, shareholders, partners, agents, and employees from all liabilities, obligations, penalties, fines, claims, litigation, demands, defenses, judgments, suits, proceedings, actions, costs, disbursements or expenses of any kind or of any nature whatsoever (including without limitation, reasonable attorneys' and experts' fees and disbursements) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Leased Premises, or which arises at any time from Tenant's use or occupancy of the Leased Premises, or from Tenant's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws and all other environmental laws.

(ii) Tenant's obligations and liabilities under this Section (d) shall survive the expiration of this Lease.

20.2. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health public health unit.

20.3. Americans with Disabilities Act. Tenant covenants and agrees, at its expense without reimbursement or contribution by Landlord, to keep, maintain, alter and replace, if necessary, the interior non-structural portions of the Leased Premises so as to maintain compliance of same with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (the "Act"), as amended from time to time, and all rules and regulations promulgated to further the purpose of and to enforce the Act (the "ADA").

20.4. Time of Essence. Time is of the essence of each and every provision and term of this Lease.

20.5. Exhibits and Riders. Exhibit A – Leased Premises Site Plan; Exhibit B – Rules and Regulations; Exhibit C – Flex Building Space: Office Standards;.

20.6. Complete Understanding. This Lease represents the complete understanding between the parties hereto as the subject matter hereof, and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in the provisions of this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein. This Lease may not be altered, waived, amended or extended except by an instrument in writing signed by Landlord and Tenant. Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this lease and that this lease will not be construed against Landlord merely because Landlord has prepared it. If there are more than one persons or entities named as "Tenant," each named person or entity shall be jointly and severally liable for all obligations of Tenant under this Lease.

20.7. Governing Law. This Lease shall be governed in all respects by the laws of the State of Florida.

20.8. Counterparts. This Lease may be signed in any number of counterparts. Each counterpart shall be an original, but all such counterparts shall constitute one Lease.

20.9 Force Majeure. In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act (other than Tenant's obligation to make payments of Rent and other charges required hereunder), by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period for the delay and the period of the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond control of either party.

## ARTICLE 21. SIGNATURES

In Witness whereof, this Lease was executed as of "Effective Date" as specified hereinabove.

WITNESSES:

"TENANT"

/s/ Andrea Carrara
Andrea Carrara

/s/ Jamie M. Grooms

AXOGEN CORPORATION
By: Jamie Grooms
Its: CEO

/s/ David Hansen
David Hansen

"LANDLORD"

/s/ Shannon Hester
Shannon Hester

/s/ Jim Shaw

WIGSHAW, LLC
By: Jim Shaw
Its: Partner

EXHIBIT “A”

SITE PLAN

EXHIBIT “B”

RULES AND REGULATIONS

1. Landlord agrees to furnish Tenant ten (10) keys without charge. Additional keys will be furnished at a nominal charge. Tenant shall not change locks or install additional locks on doors without prior written consent of Landlord. Tenant shall not make or cause to be made duplicates of keys procured form Landlord without prior approval of Landlord. All keys to Leased Premises shall be surrendered to Landlord upon termination of this Lease.
2. Tenant will refer all contractors, contractor’s representatives and installation technicians rendering any service on or to the Leased Premises for Tenant to Landlord for Landlord’s approval before performance of any contractual service. Tenant’s contractors and installation technicians shall comply with Landlord’s rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Leased Premises, including installation of telephone, telegraph equipment or any other physical portion of the Leased Premises or Building.
3. Tenant shall not at any time occupy any part of the Leased Premises or Building as sleeping or lodging quarters.
4. Tenant shall not place, install or operate on the Leased Premises or in any part of the Building any engine or stove or cook thereon or therein, or place or use in or about the Leased Premises or Building any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material without written consent of Landlord.
5. Landlord will not be responsible for lost or stolen personal property, equipment, money or jewelry from the Leased Premises or the Building or automobiles of tenant or invitees regardless of whether such loss occurs when the area is locked against entry or not.
6. No dogs, cats, fowl, or other animals shall be brought into or kept in or about the Leased Premises or Building without the written consent of the Landlord.
7. Employees of Landlord shall not receive or carry messages for or to any Tenant or other person or contract with or render free or paid services to any Tenant or to any of Tenant’s agents, employees or invitees.
8. None of the parking, plaza, recreation or lawn areas, entries, passages, doors, hallways or stairways shall be blocked or obstructed or any rubbish, litter, trash, or material of any nature placed, emptied or thrown into these areas or such area used by Tenant’s agents, employees or invitees at any time for purposes inconsistent with their designation by Landlord.
9. The water closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the Building shall be borne by the person who shall occasion it. No person shall waste water by interfering with the faucets or otherwise.
10. No person shall disturb occupants of the Building by the use of any radios, record players, tape recorders, musical instruments, the making of unseemly noises or any unreasonable use.
11. Nothing shall be thrown out of the windows of the Building or other passages.
12. Tenant shall not lay floor covering within the Leased Premises without written approval of the Landlord. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
13. There shall be no smoking in any area inside the Building.

EXHIBIT "C"

Flex Building Space: Office Standards

**Build out of Office Space with fixtures and interior design as approved by Tenant and Landlord**

Minimum Rental Square Footage: 4,000 sf

Air Conditioning: 3-Ton Unit Per 1,000sf of Rental Space

ADA Compliant Restrooms (two per unit)

Allowance of $3.00sf for Carpeting of Office Space

Allowance of $3.00sf for Ceramic Tile in Hall and Foyer

Break room with sink, cabinet and counter

Electrical/Communication:

200 AMP electrical service
Two 2x4 recessed light fixtures per 100 sf of space
Two electrical plugs per office
Two communication lines per office

Ten foot high ceilings with 2x2 grid tiles

Standard hot water heater

Painted walls with cove base

Solid core doors in metal frames

Janitor's closet

Storage/communication equipment room

Conference room

Shell Building

* The shell building is 32,500 square feet with exposed concrete tilt walls
* Fifteen feet high clearance to bottom of bar joist
* Insulated roof deck R-24
* Glass store front and rear access rollup door or steel swing door
* Water service stubbed out to unit with individual water meter
* Waste water line stubbed to each unit
* Electrical conduit stubbed to unit from a centrally located meter bank
* Floors are finished concrete
* Building is fully landscaped and lighted
* Parking is provided
* Grounds and lights are maintained by landlord
* Each unit is individually metered for electricity and water (paid for by tenant)

The cost of any and all work exceeding Tenant's Improvement Allowance, to be agreed by the Parties in writing, shall be the responsibility of, and paid by Tenant at the time the additional costs are incurred during construction of the Leased Premises. Plans and specifications for any work to be completed by Tenant must be submitted by Tenant to Landlord for Landlord's approval and acceptance.

**EXHIBIT 31.01**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Karen Zaderej, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2011

/s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer

**EXHIBIT 31.02**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Gregory G. Freitag, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2011

/s/ Gregory G. Freitag
Gregory G. Freitag
Chief Financial Officer

**EXHIBIT 32.01**

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (SUBSECTIONS (A) AND (B) OF SECTION 1350, CHAPTER 63 OF TITLE 18, UNITED STATES CODE)**

In connection with the Quarterly Report of AxoGen, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2011 as filed with the Securities and Exchange Commission (the "Report"), Karen Zaderej, Chief Executive Officer of the Company and Gregory G. Freitag, Chief Financial Officer of the Company, each certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of his/her knowledge that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 14, 2011

/s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer
(Principal Executive Officer)

/s/ Gregory G. Freitag
Gregory G. Freitag
Chief Financial Officer
(Principal Financial Officer)