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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549  
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FORM 8-K

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

Date of Report (Date of earliest event reported) March 14, 1995

CONMED CORPORATION

(Exact name of registrant as specified in its charter)

New York	0-16093	16-0977505
----- (State or other jurisdiction of incorporation or organization)	----- (Commission File Number)	----- (I.R.S. Employer Identification No.)
310 Broad Street, Utica, New York		13501
----- (Address of principal executive offices)		----- (Zip Code)

(315) 797-8375

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(Registrant's telephone number, including area code)

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

Item 2. Acquisition or Disposition of Assets

On March 14, 1995, the CONMED Corporation (CONMED) acquired Birtcher Medical Systems, Inc. (Birtcher). Birtcher is a manufacturer and distributor of electrosurgery equipment and supplies.

CONMED acquired Birtcher through a merger with a subsidiary of CONMED. As a result of the merger, Birtcher became a wholly owned subsidiary of CONMED, and each share of Birtcher common stock, no par value, was converted into one twelfth (1/12) of a share of CONMED common stock, \$.01 par value per share, and each share of Series A Preferred Stock of Birtcher was converted into one half (1/2) of a share of CONMED Common Stock. Approximately 1,080,000 shares of CONMED Common Stock were issued to effect the merger.

In connection with the acquisition, CONMED entered into a revised Term Loan Agreement with The Chase Manhattan Bank N.A. and Fleet Bank providing up to \$30,000,000 in credit facilities. Additionally, the Company entered into a \$10,000,000 Revolving Credit Agreement with the same banks. The Company has utilized \$20,000,000 of the Term Loan facility to refinance the Company's and Birtcher's existing bank debt and to liquidate certain outstanding liabilities of Birtcher.

Item 7. Financial Statements and Exhibits

(a) Financial Statements of Business Acquired.

It is impracticable for the Registrant to provide at this time any of the financial statements required by this item. The Registrant will file the required financial statements as soon as practicable and, in any event, within sixty (60) days after the required filing date of this report.

(b) Pro Forma Financial Information

See Item 7(a) above.

(c) Exhibits

1) Merger agreement among CONMED Corporation, CONMED Acquisition Corporation and Birtcher Medical Systems, Inc.

2) Credit Agreement - Term Loan Facility among CONMED Corporation, the Banks and The Chase Manhattan Bank, N.A. as Agent.

3) Credit Agreement - Revolving Credit Facility among CONMED Corporation, the Banks and The Chase Manhattan Bank, N.A. as Agent.

SIGNATURE

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.

CONMED CORPORATION

By: /s/ Robert D. Shallish, Jr.  
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Vice President-Finance

Dated: March 27, 1995

PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER ("Agreement"), dated as of December 5, 1994, is entered into by and among Birtcher Medical Systems, Inc., a California corporation ("Birtcher"), CONMED Corporation, a New York corporation ("CONMED"), and CONMED Acquisition Corporation, a California corporation ("Subsidiary"). Birtcher and Subsidiary may sometimes be referred to herein as the "Constituent Corporations." Subsidiary and CONMED may sometimes be referred to herein collectively as the "CONMED Companies" or singularly as a "CONMED Company." Birtcher and the CONMED Companies may sometimes be referred to herein collectively as the "Corporations" or singularly as the "Corporation."

W I T N E S S E T H :

WHEREAS, the respective Corporations deem it advisable and in the respective best interests of the Corporations and of their respective stockholders that Subsidiary be merged with and into Birtcher pursuant to the General Corporation Law of the State of California (the "California Act"), in a transaction whereby (i) each of the shares of Common Stock, no par value, of Birtcher ("Birtcher Common Stock") issued and outstanding at the Effective Time will be cancelled and converted into the right to receive one twelfth (1/12) of a share of Common Stock, \$0.01 par value, of CONMED ("CONMED Common Stock") and (ii) each of the shares of Series A Preferred Stock of Birtcher ("Birtcher Preferred Stock") issued and outstanding at the Effective Time will be cancelled and converted into the right to receive (i) one half (1/2) of a share of CONMED Common Stock, such merger to be upon the additional terms and conditions contained in this Agreement (the "Merger"); and

WHEREAS, the Corporations intend that the Merger will constitute a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Corporations desire to set forth certain representations, warranties and covenants made by each to the other as an inducement to the consummation of the Merger;

NOW THEREFORE, in consideration of the premises and the mutual agreements, promises and covenants herein contained, the Corporations hereby agree in accordance with the California Act that the Constituent Corporations shall be, at the "Effective Time" of this Agreement (as hereinafter defined in Section 4.02), merged into a single corporation existing under the laws of the State of California, to wit, Birtcher, one of the Constituent Corporations, which shall be the surviving corporation (such corporation in its capacity as such surviving corporation being hereinafter called the "Surviving Corporation") and shall be a wholly-owned subsidiary of CONMED, and the Corporations hereby adopt and agree to the following covenants, terms and conditions relating to the Merger and the manner of carrying the same into effect.

ARTICLE I

ARTICLES OF INCORPORATION; BY-LAWS;  
DIRECTORS AND OFFICERS; VACANCIES

1.01 Articles of Incorporation. The Articles of Incorporation of Birtcher, as in effect at the Effective Time (other than as amended by this Agreement), shall be the Articles of Incorporation of the Surviving Corporation until changed as provided by law.

1.02 By-Laws. The By-Laws of Birtcher, as in effect at the Effective Time, shall be the By-Laws of the Surviving Corporation until changed as provided by law.

1.03 Directors. The directors of Subsidiary in office on the Effective Time shall become on such date the directors of the Surviving Corporation, each to hold office until his successor is elected and shall have

duly qualified.

1.04 Officers. The officers of Subsidiary in office at the Effective Time shall become on such date the officers of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-Laws of the Surviving Corporation, until their successors are elected and shall have qualified.

1.05 Vacancies. If, as of the Effective Time, a vacancy shall exist on the Board of Directors or in any of the offices of the Surviving Corporation by reason of death or inability to act, or for any other reason, such vacancy may be filled in the manner provided in the By-Laws of the Surviving Corporation.

## ARTICLE II

### STATUS AND CONVERSION OF SECURITIES

2.01 Authorized Capitalization of Surviving Corporation. The total number of shares which the Surviving Corporation shall have authority to issue shall be 1,000 shares of common stock, \$0.01 par value.

2.02 Status and Conversion of Securities. The status of outstanding capital stock of each of the Constituent Corporations and the manner and basis of converting shares of capital stock of each of the Constituent Corporations into or for shares of capital stock of the Surviving Corporation or CONMED Common Stock at the Effective Time shall be as follows:

(a) Each share of Subsidiary Common Stock, as hereinafter defined in Section 7.03, outstanding as of the Effective Time shall be converted into one share of common stock, \$0.01 par value, of the Surviving Corporation.

(b) Each share of Birtcher Common Stock outstanding as of the Effective Time (other than shares of Birtcher Common Stock owned by the CONMED Entities (as hereinafter defined) and shares of Birtcher Common Stock as to which statutory dissenter's rights are exercised) shall be converted into one twelfth (1/12) of a share of CONMED Common Stock (after giving effect to the three-for-two stock split in the form of a stock dividend with respect to CONMED Common Stock, as set forth in Section 8.09) to be represented by the certificate or certificates representing the CONMED Common Stock; provided, however, that each holder of Birtcher Common Stock entitled to receive a fractional share of CONMED Common Stock, whether or not in addition to a whole number of shares of CONMED Common Stock, shall receive cash in lieu of such fractional share, the amount of such cash adjustment being equal to such fractional proportion of the Last Sale Price (as defined below) of a share of CONMED Common Stock on the Effective Date. The "Last Sale Price" with respect to CONMED Common Stock is the last sale price, as reported on the National Association of Securities Dealers Automated Quotation National Market System ("NMS") (as reported by The Wall Street Journal or, if not reported thereby, another authoritative source) for such trading day.

(c) Each share of Birtcher Preferred Stock outstanding as of the Effective Time (other than shares of Birtcher Preferred Stock owned by the CONMED Entities and shares of Birtcher Preferred Stock as to which statutory dissenter's rights are exercised) shall be converted into (i) one half (1/2) of a share of CONMED Common Stock (after giving effect to the three-for-two stock split in the form of a stock dividend with respect to CONMED Common Stock, as set forth in Section 8.09) to be represented by the certificate or certificates representing the CONMED Common Stock and (ii) an amount of cash equal to all dividends in arrears on such share of Birtcher Preferred Stock as of the Effective Time (such payment being deemed to be a satisfaction and discharge of all amounts due and payable with respect to the Birtcher Preferred Stock); provided, however, that each holder of Birtcher

Preferred Stock entitled to receive a fractional share of CONMED Common Stock, whether or not in addition to a whole number of shares of CONMED Common Stock, shall receive cash in lieu of such fractional share, the amount of such cash adjustment being equal to such fractional proportion of the Last Sale Price of a share of CONMED Common Stock on the Effective Date.

2.03 Existing Options and Warrants for Birtcher Stock. As of the Effective Time, all of the options and warrants set forth on Schedule 2.03 hereto (collectively, the "Birtcher Options") shall be converted into options or warrants to acquire CONMED Common Stock on the same terms and conditions as are in effect immediately prior to the Merger as adjusted as set forth below. CONMED shall grant to each holder of Birtcher Options a substitute option or warrant, as applicable, giving the holder of such Birtcher Options the right to purchase the number of whole shares of CONMED Common Stock, but not any fractional shares or cash in lieu of fractional shares, as the holder of such Birtcher Options would have received under Section 2.02(b) above had such Birtcher Options been entirely vested and fully exercised, and the underlying shares of Birtcher Common Stock been outstanding and held by such holder at the Effective Time, at a purchase price per share equal to (i) twelve (12) multiplied by (ii) the purchase price per share of Birtcher Common Stock set forth in such Birtcher Options (with any fractional cent being rounded to the next higher full cent). The remaining terms and conditions of the Birtcher Options shall remain identical (subject to revisions required to reflect the substitution of CONMED and Birtcher).

2.04 Exchange of Certificates and Related Matters. (a) After the Effective Time, each holder of a certificate or certificates theretofore representing outstanding shares of Birtcher Common Stock or Birtcher Preferred Stock shall surrender the same to Registrar and Transfer Company, CONMED's stock transfer agent (the "Exchange Agent"), and each holder shall upon such surrender receive in exchange therefor a certificate or certificates representing the number of full shares of CONMED Common Stock into which the shares of Birtcher Common Stock or Birtcher Preferred Stock theretofore represented by the certificate or certificates so surrendered shall have been converted pursuant to the Merger, and cash (without interest thereon) in lieu of any fractional share of CONMED Common Stock. As soon as practicable after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to send a notice and transmittal form to each holder of record of certificates theretofore representing shares of Birtcher Common Stock or Birtcher Preferred Stock advising such holder of the procedure for surrendering to the Exchange Agent (or such forwarding agents as may be appointed by the Exchange Agent) such certificates for exchange.

(b) If any issuance of shares of CONMED Common Stock in exchange for shares of Birtcher Common Stock or Birtcher Preferred Stock is to be made to a person other than the person in whose name the certificate theretofore representing such shares surrendered for exchange is registered, the following shall be conditions of such exchange (i) that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer, and (ii) that the person requesting such issuance shall either (a) pay to the Exchange Agent any transfer or other taxes required by reason of the issuance of shares to a person other than the registered holder of the certificate surrendered, or (b) establish to the satisfaction of CONMED that such tax has been paid or is not payable.

(c) After the Effective Time and until surrendered, each certificate which theretofore represented outstanding shares of Birtcher Common Stock or Birtcher Preferred Stock converted into shares of CONMED Common Stock shall be deemed for all corporate purposes, other than the payment of dividends and distributions, to evidence ownership of the number of full shares of CONMED Common Stock into which such shares of Birtcher Common Stock or Birtcher Preferred Stock were converted. No dividend or other distribution, if any, payable to holders of CONMED Common Stock shall be paid to the holders of any such certificates for shares of Birtcher Common Stock or Birtcher Preferred Stock until such certificates are surrendered, but upon surrender of such certificates, all such declared dividends and distributions, if any, shall be paid to the holder of record of the full shares of CONMED Common Stock

represented by the certificate issued in exchange therefor, without interest.

(d) As of the Effective Time, the stock transfer books of Birtcher will be closed and no further transfers shall be made thereon.

(e) All funds deposited with the Exchange Agent pursuant to this Agreement, if any (together with any Interest or profits thereon), and not paid against surrender to the Exchange Agent of certificates representing Birtcher Common Stock or Birtcher Preferred Stock prior to the first anniversary of the Effective Time shall be returned by the Exchange Agent to CONMED, and any holder of Birtcher Common Stock or Birtcher Preferred Stock who has not surrendered the certificates representing such shares to the Exchange Agent prior to such time shall look, subject to applicable escheat and other laws, as a general creditor, only to CONMED for payment.

(f) Shares of Birtcher Capital Stock as to which any dissenters' or appraisal rights have been perfected or obtained under applicable law shall not be converted in accordance with the provisions of this Article II and the holders of such shares shall only have such rights as are specifically granted by Chapter 13 of the California Act. If any holder of Birtcher Capital Stock shall be entitled to require Birtcher to purchase his or her shares of Birtcher Capital Stock for their "fair market value", as provided in Chapter 13 of the California Act, Birtcher shall give CONMED notice thereof and CONMED shall have the right to participate in all negotiations and proceedings with respect to any such demands. Birtcher shall not, except with the prior written consent of CONMED, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment. If any holder of Birtcher Common Stock shall fail to perfect or shall have effectively withdrawn or lost the right to dissent, the Birtcher Capital Stock held by such Birtcher stockholder shall thereupon be treated as provided in Section 2.02 hereof.

2.05 Undertaking of CONMED. CONMED shall, prior to the Effective Time, take all necessary steps to be able, as of the Effective Time, to issue shares of CONMED Common Stock and to pay cash for fractional shares to the extent set forth in, and in accordance with the terms of, this Article II, including without limitation, reserving for issuance a sufficient number of shares of CONMED Common Stock.

### ARTICLE III

[INTENTIONALLY OMITTED]

### ARTICLE IV

#### APPROVALS; EFFECTIVE TIME; PROXY STATEMENT

4.01 Approvals. (a) A special meeting (the "Birtcher Shareholders' Meeting") of the holders of shares of Birtcher Common Stock and Birtcher Preferred Stock (all of the foregoing sometimes collectively referred to as "Birtcher Capital Stock") shall be called to be held as soon as practicable in accordance with the Articles of Incorporation and By-Laws of Birtcher, the California Act, and the applicable rules and regulations of the Securities and Exchange Commission (the "SEC") and the National Association of Securities Dealers, Inc. ("NASD") to consider and vote upon the adoption of this Agreement and approval of the Merger. In the event that such meeting is adjourned, the record date fixed for such meeting shall be the record date for any and all adjournments thereof. In connection with such meeting, Birtcher shall submit this Agreement to the holders of shares of Birtcher Common Stock and Birtcher Preferred Stock for all votes and approvals which are required in connection with the execution, delivery and performance of this Agreement and approval of the Merger under the California Act, Birtcher's Articles of Incorporation and By-Laws, and the applicable rules and regulations of the SEC and NASD.

(b) The CONMED Companies have submitted this Agreement to

their respective Boards of Directors, and to CONMED as the sole stockholder of Subsidiary, for all approvals which are required in connection with the execution, delivery and performance of this Agreement and adoption and approval of the Merger under the California Act, the CONMED Companies' respective articles or certificate of incorporation and by-laws, and the applicable rules and regulations of the SEC and NASD ("CONMED Approval").

(c) If this Agreement and the Merger shall be adopted and approved as provided in Section 4.01(a) hereof by the holders of the outstanding shares of Birtcher Common Stock and Birtcher Preferred Stock (such occurrence being referred to as the "Birtcher Approval"), and if the Merger is not thereafter abandoned or this Agreement terminated as permitted by the provisions of this Agreement, as soon as practicable after the satisfaction or waiver of the other conditions precedent to consummation of the Merger, an appropriate Certificate of Merger setting forth the information required by the California Act and signed and verified on behalf of the Constituent Corporations (the "Certified Agreement") shall be delivered to and filed with the Secretary of State of California in accordance with the California Act, as soon as is practicable after receipt of the Birtcher Approval.

4.02 Closing/Effective Time. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place as soon as practicable after the satisfaction or waiver of the conditions set forth in Article IX or at such other time and place as CONMED and Birtcher shall agree; provided that the conditions set forth in Article IX shall have been satisfied or waived prior to that time. Such Closing shall take place at the office of Sullivan & Cromwell, 444 South Flower Street, Los Angeles, California 90071. The date on which the Closing occurs is herein referred to as the "Closing Date." The time at which the Merger shall become effective is herein referred to as the "Effective Time" and the date on which the Merger shall become effective is herein referred to as the "Effective Date." The date of filing of the Certified Agreement with the Secretary of State of California is referred to herein as the "Filing Date," which shall take place as soon as possible following the Closing Date. The Effective Time shall in no event be later than the close of business on the first business day following the Filing Date.

4.03 Registration Statement. Birtcher and CONMED shall jointly prepare and CONMED shall file with the SEC a registration statement (such registration statement as of the time such registration statement is declared effective being hereinafter called the "Registration Statement") on Form S-4 under the Securities Act of 1933, as amended (the "Securities Act"), in order to register (i) the shares of CONMED Common Stock into which shares of Birtcher Common Stock and Birtcher Preferred Stock are to be converted pursuant to this Agreement and (ii) the Birtcher Options (to the extent that the shares of CONMED Common Stock underlying such Birtcher Options are not registered on a Form S-8 under the Securities Act) and also to serve as a prospectus/proxy statement to be distributed in connection with the Birtcher Shareholders' Meeting. Promptly after the Registration Statement is ordered effective, Birtcher shall disseminate the definitive Prospectus/Proxy Statement (the "Prospectus/Proxy Statement") included therein to holders of record of shares of Birtcher Capital Stock as of the record date approved by Birtcher and CONMED. Birtcher shall use its best efforts to assure that the date upon which mailing of the Prospectus/Proxy Statement to its shareholders shall be completed (the "Mailing Date") as soon thereafter as practicable.

## ARTICLE V

### CERTAIN EFFECTS OF THE MERGER

When the Merger becomes effective, the separate existence of Subsidiary shall cease, Subsidiary shall be merged with and into Birtcher, and the Surviving Corporation, without further action, shall possess all the rights, privileges, immunities, powers and purposes of each of the Constituent Corporations and shall be subject to all the duties and liabilities of a corporation organized under the California Act; and all the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the Constituent Corporations, shall remain with and be vested

in the Surviving Corporation without further act or deed; and the Surviving Corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the Constituent Corporations. Any claim existing or action or proceeding pending by or against either Constituent Corporations may be prosecuted as if the Merger had not taken place; neither the rights of creditors nor any liens upon the property of either Constituent Corporation shall be impaired by the Merger; and the title to any real estate or any interest in real estate vested in either Constituent Corporation shall not revert or be in any way impaired by reason of the Merger. At any time, or from time to time, after the Effective Time, the officers of the Surviving Corporation, may in the name of Birtcher, execute and deliver all such proper deeds, assignments and other instruments and take or cause to be taken all such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest, perfect or confirm in the Surviving Corporation title to and possession of all of Birtcher's property, rights, privileges, immunities, powers and purposes, and otherwise to carry out the purposes of this Agreement.

ARTICLE VI  
REPRESENTATIONS AND WARRANTIES OF BIRTCHER

As of the execution date hereof, Birtcher represents and warrants that, except as otherwise disclosed in the disclosure letter, dated the date hereof, from Birtcher to CONMED (the "Birtcher Disclosure Letter"), which shall be accompanied by copies of all documents or agreements referred to therein:

6.01 Organization. Birtcher is a corporation duly organized, validly existing and in good standing under the laws of California, has all necessary corporate powers to own its properties and to carry on its business as now owned and operated by it, and is duly qualified to do business and is in good standing in those jurisdictions in which the nature of Birtcher's business or of its properties makes such qualification necessary except for those jurisdictions where the failure to so qualify would not have a material adverse effect on Birtcher's business.

6.02 Capital. The authorized capital stock of Birtcher as of the date of this Agreement consists, subject to conversion of Birtcher Preferred Stock into Birtcher Common Stock pursuant to the terms of the Certificate of Determination, of (i) 50,000,000 shares of common stock, having no par value, of which 10,164,139 are duly and validly issued and outstanding, and (ii) 9,000,000 shares of Preferred Stock, no par value, of which 505,000 shares are designated Series A Preferred Stock, of which 465,399 shares are duly and validly issued and outstanding. Each share of Birtcher Preferred Stock is convertible into Birtcher Common Stock in the manner set forth in the Certificate of Determination relating to the Birtcher Preferred Stock. All of the outstanding Birtcher Capital Stock is validly issued, fully paid and nonassessable. The only outstanding subscriptions, options, rights, warrants, convertible securities or other agreements or commitments which obligate Birtcher to issue or to transfer from treasury additional shares of Birtcher Common Stock or other securities are the Birtcher Options set forth on Schedule 2.03 and the Birtcher Preferred Stock.

6.03 Title to Assets. The Birtcher Companies, as hereinafter defined, have good and indefeasible title to all of the assets and interests in assets, whether real, personal, mixed, tangible or intangible, used in the business of the Birtcher Companies, free and clear of restrictions on or conditions to transfer or assignment, and free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, easements, rights-of-way, covenants, conditions or restrictions, except for (i) those disclosed in Birtcher's consolidated financial statements as of June 30, 1994, or otherwise thereafter included in the Birtcher Statements (as hereinafter defined); (ii) any lien for current taxes not yet due and payable; (iii) possible minor matters which, in the aggregate, are not substantial in the present or intended use of any of these assets and which do not materially impair business operations of the respective Birtcher Company; or (iv) those assets that are held under any lease, security agreement, conditional sales contract or other title retention or security arrangement with those whose annual payments thereunder exceed



\$5,000 singularly or \$50,000 in the aggregate. All real property and tangible personal property of each Birtcher Company is in good operating condition and repair, ordinary wear and tear excepted. No officer, director or employee of any Birtcher Company, nor any spouse, child or other relative of any of these persons, owns or has any interest, directly or indirectly, in any of the real or personal property owned by or leased to any Birtcher Company or any copyrights, patents, trademarks, trade names or trade secrets licensed by any Birtcher Company.

6.04 Subsidiaries. Birtcher does not own, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, business, trust or other entity (such entities as are described in the Birtcher Disclosure Letter are hereinafter referred to as the "Birtcher Subsidiaries"). Each of the Birtcher Subsidiaries is a corporation duly organized, validly existing, and in good standing (or equivalent status) under the laws of its respective jurisdiction of organization as indicated on the Birtcher Disclosure Letter, has all necessary corporate power to own its properties and to operate its business as now owned and operated by it, and is duly qualified to do business and is in good standing in those other jurisdictions disclosed in the Birtcher Disclosure Letter. These are the only jurisdictions in which the nature of the Birtcher Subsidiaries' businesses or of their properties makes such qualification necessary except for those jurisdictions where the failure to so qualify would not have a material adverse effect on Birtcher's business. All the issued and outstanding shares of capital stock of each of the Birtcher Subsidiaries are validly issued, fully paid, and nonassessable, and are owned by Birtcher or one of the Birtcher Subsidiaries, free and clear of all liens, encumbrances, security agreements, equities, options, claims, charges and restrictions. Birtcher or the Birtcher Subsidiaries owning such stock have full power to transfer these shares without obtaining the consent or approval of any other person or governmental authority. There are no outstanding subscriptions, options, rights, warrants, convertible securities or other agreements or commitments obligating any of the Birtcher Subsidiaries to issue or to transfer from treasury any additional shares of their capital stock of any class. There are no outstanding contractual obligations of Birtcher or any of the Birtcher Subsidiaries to repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests of Birtcher or any of the Birtcher Subsidiaries.

6.05 SEC Filings; Financial Statements and Certain Periodic Reports. Birtcher has previously furnished to CONMED true and complete copies of Birtcher's Annual Reports on Form 10-K for fiscal years ended June 30, 1994, 1993 and 1992, in the case of the Form 10-K for the fiscal year ended June 30, 1994, as amended by the Form 10-K/A filed October 28, 1994 (the "Birtcher 10-Ks"), which contain consolidated balance sheets of Birtcher and the Birtcher Subsidiaries as of June 30, 1994, 1993 and 1992, and the related consolidated balance sheets, statements of operations, shareholders' equity and cash flow for the three years ended on those dates (collectively, the "Birtcher Financial Statements"), audited by Ernst & Young, L.L.P., Birtcher's independent public accountants, whose reports with respect to such financial statements are included in the Birtcher Financial Statements. In addition, Birtcher has previously furnished to CONMED a true and complete copy of Birtcher's Report on Form 10-Q for the fiscal quarter ended September 30, 1994 (the "9/30/94 10-Q") together with unaudited consolidated balance sheets of Birtcher and the Birtcher Subsidiaries as of October 31, 1994, and the related unaudited consolidated statement of operations and cash flow for period ending on such dates (all of the foregoing being referred to as the "Birtcher Unaudited Financial Statements"). The Birtcher Financial Statements and the Birtcher Unaudited Financial Statements (collectively, the "Birtcher Statements") have been prepared in accordance with generally accepted accounting principles which have been consistently applied by Birtcher throughout all of the periods indicated, and fairly present the consolidated financial position of Birtcher and the Birtcher Subsidiaries as of the respective dates of the balance sheets included in the Birtcher Statements in all material respects, and the consolidated results of their operations for the respective periods indicated in all material respects. The Birtcher 10-Ks and 9/30/94 10-Q (the "Birtcher Reports") have been prepared and filed with the SEC in accordance with all applicable laws, rules, regulations, and requirements, and all of the information contained therein is true, complete and correct in all material respects.

6.06 Absence of Changes. Since June 30, 1994, and except as otherwise set forth in the Birtcher Reports, there has not been any of the following acts or commitments:

(i) Transaction by Birtcher or any Birtcher Subsidiary (collectively, the "Birtcher Companies" or singularly a "Birtcher Company") except in accordance with prudent business standards;

(ii) Capital expenditure by a Birtcher Company exceeding \$5,000 singularly or \$50,000 in the aggregate;

(iii) Material adverse change in the financial condition, liabilities, assets, business or prospects of any Birtcher Company (CONMED acknowledges that the operations of Birtcher have been adversely affected by restraints on Birtcher's liquidity and is not aware of any material adverse effect with respect to Birtcher between September 30, 1994 and the date of this Agreement other than as may have been disclosed to CONMED);

(iv) Destruction or damage to or loss of any asset of a Birtcher Company (whether or not covered by insurance) which materially and adversely affects the financial condition, business or prospects of such Birtcher Company;

(v) Labor trouble or other event or condition of any character materially and adversely affecting the financial condition, business, assets or prospects of any Birtcher Company;

(vi) Change in accounting methods or practices (including, without limitation, any change in depreciation or amortization policies or rates) by any Birtcher Company;

(vii) Revaluation of any asset by any Birtcher Company;

(viii) Declaration setting aside or payment of a dividend or other distribution in respect of the capital stock of any Birtcher Company, or any direct or indirect redemption, purchase or other acquisition by any Birtcher Company of any of its shares of capital stock;

(ix) Increase in the salary or other compensation payable or to become payable by any Birtcher Company to any of its present or former officers, directors or employees, or the declaration, payment, commitment or obligation of any kind for the payment, by any Birtcher Company, of a bonus or other additional salary or compensation to any such person, including the grant of any Birtcher Option or repricing of the exercise price of any outstanding Birtcher Option;

(x) Sale or transfer of any asset by any Birtcher Company, except for the sale of inventory in accordance with prudent business standards;

(xi) Amendment or termination of any contract, agreement or license to which any Birtcher Company is a party;

(xii) Loan by any Birtcher Company to any person or entity, or guaranty by any Birtcher Company of any loan;

(xiii) Mortgage, pledge or other encumbrance of any asset of any Birtcher Company;

(xiv) Waiver or release of any right or claim of any Birtcher Company;

(xv) Other event or condition of any character that has or might reasonably be expected to have a material and adverse effect on the financial condition, business, assets or prospects of any Birtcher

Company;

(xvi) Except for the issuance of shares of Birtcher Common Stock as a result of the exercise of Birtcher Options, the issuance, sale or purchase by any Birtcher Company of any shares of its capital stock of any class, or of any other of its securities, or options, warrants or rights therefore;

(xvii) Amendment, termination, modification, withdrawal or acceleration of any forbearance agreement or interim financing arrangement of any Birtcher Company; or

(xviii) Agreement by any Birtcher Company to do any of the things described in the preceding clauses (i) through (xvii).

6.07 Liabilities. No Birtcher Company has any liabilities, obligations or commitments of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due (herein "Liabilities") except Liabilities which are adequately disclosed or accrued against in the Birtcher Statements or identified and reflected in the notes thereto.

6.08 Tax Matters. Within the times and in the manner prescribed by law, each Birtcher Company, and any consolidated, combined, unitary or aggregate group for tax purposes of which any Birtcher Company is or has been a member, has timely has filed all foreign country, federal, state and local tax returns ("Tax Returns") required by law, and has paid all taxes, assessments and penalties due and payable ("Taxes") and has provided adequate reserves in the Birtcher Statements for any Taxes that have not been paid but are properly accruable under generally accepted accounting principles, whether or not shown as being due on any returns. There are no present disputes as to taxes of any nature allegedly due or payable by any Birtcher Company. Except to the extent that the inaccuracy of any of the following, individually or in the aggregate, is not reasonably likely to have a material adverse effect on Birtcher's business, no claim for unpaid Taxes has become a lien or encumbrance of any kind against the property asserted against any Birtcher Company; no audit of any Tax Return of any Birtcher Company is being conducted by a tax authority; and no extension of the statute of limitations on the assessment of any Taxes has been granted by any Birtcher Company and is currently in effect. No Birtcher Company has made an election under Section 341(f) of the Internal Revenue Code of 1986, as amended (the "Code"). The Merger will not result in the disallowance of any deduction for compensation paid or payable by any Birtcher Company under Section 280G of the Code. Birtcher will have net operating loss carryovers within the meaning of Section 172(c) of the Code of at least \$10,000,000 as at the Effective Time.

6.09 Real Property. Schedule 6.09 to this Agreement is a complete and accurate legal description of each parcel of real property leased to ("Birtcher Leased Real Property") any Birtcher Company. Birtcher does not own any real property. Birtcher has previously furnished CONMED with a true and correct list of the policies of title insurance issued to any Birtcher Company for the Birtcher Leased Real Property. A copy of the lease for each of the Birtcher Leased Real Property has been furnished to CONMED. All the leases concerning the Birtcher Leased Real Property are valid and in full force, and there does not exist any default by a Birtcher Company, or event that with notice or lapse of time, or both, would constitute a default under any of these leases. To the best of Birtcher's knowledge, there does not exist any default or event that with notice or lapse of time, or both, would constitute a default under any of the leases, by any person or entity other than a Birtcher Company that is a party to any of such leases.

6.10 Zoning. The zoning, deed restriction or other land use provisions or restrictions of each parcel of Birtcher Leased Real Property permit the presently existing improvements and the continuation of the business presently being conducted on such parcel.

6.11 Inventories. The inventories of raw materials, work in process and finished goods (collectively called "Inventories") shown on the Birtcher Unaudited Financial Statements, consist of items of a quality and

quantity useable and salable in the ordinary course of business by each Birtcher Company, except for obsolete and slow moving items and items below standard quality, all of which have been written down on the books of such Birtcher Company to estimated net realizable value or have been provided for by adequate reserves. All items included in the Inventories are the property of each respective Birtcher Company and in their possession, except for inventory on consignment at Birtcher's agent locations and sales made in accordance with prudent business standards since September 30, 1994; for each of these sales either the purchaser has made full payment or the purchaser's liability to make payment is reflected in the books of such Birtcher Company. No items included in the Inventories have been pledged as collateral or are held by any Birtcher Company on consignment from others. The Inventories shown on all the consolidated balance sheets included in the Birtcher Statements are based on quantities determined by physical count or measurement, taken within the preceding twelve months, and are valued at the lower of cost (determined on a first-in, first-out basis) or market value and on a basis consistent with that of prior years.

6.12 Other Property. All trucks, automobiles, machinery, equipment, furniture, supplies, tools, dies, jigs, molds, patterns, drawings and all other tangible personal property owned by, in the possession of, or used by any Birtcher Company are located on a tract of the Birtcher Leased Real Property. Each Birtcher Company owns or leases such tangible personal property that is necessary for such Birtcher Company to conduct its respective business as now conducted.

6.13 Accounts Receivable. All of the accounts receivable of each Birtcher Company as set forth in the Birtcher Unaudited Financial Statements dated as of September 30, 1994, and all accounts receivable of each Birtcher Company created after that date, arose from valid sales in accordance with prudent business practices. All accounts receivable shown in such Birtcher Unaudited Financial Statements have been collected in full since that date, or are collectible at their full amounts less any estimated allowance for doubtful accounts and trade discounts, which allowance is determined in a manner consistent with the manner used in the Birtcher Financial Statements.

6.14 Trade Names and Rights. Each Birtcher Company has registered all trade names, trademarks, and service marks in all jurisdictions necessary to evidence ownership thereof and to permit such Birtcher Company to conduct its business in the way it is currently conducted, or otherwise has all rights or licenses necessary to use the same. No Birtcher Company has infringed, or is now infringing, on any trade name, trademark, or service mark belonging to any other person, firm or corporation. Each Birtcher Company owns, or holds adequate licenses or other rights to use, all trademarks, service marks and trade names necessary for its business as now conducted by it, and its ownership and use do not, and will not, conflict with, infringe on or otherwise violate any rights of others.

6.15 Patents. Each Birtcher Company has all patents or patent applications (the "Birtcher Patents") and copyrights (the "Birtcher Copyrights") registered in all jurisdictions necessary to evidence ownership thereof and to permit such Birtcher Company to conduct its business in the way it is currently conducted, or otherwise has all rights or license necessary to use the same. The Birtcher Patents and Birtcher Copyrights are valid and in full force and effect and are not subject to any taxes, maintenance fees or actions that have not been currently paid. There has not been any interference, action or other judicial, arbitration or other adversary proceeding concerning the Birtcher Patents or the Birtcher Copyrights. The manufacture, use, or sale of the inventions, models, designs and systems covered by the Birtcher Patents or the Birtcher Copyrights do not violate or infringe on any patent or any proprietary or personal right of any person, firm or corporation; and one of the Birtcher Companies has infringed or is now infringing on any patent or other right belonging to any person, firm or corporation and none of the Birtcher Companies are subject to any claim for such infringement.

6.16 Employee Benefit Plans. Schedule 6.16 is a true and complete list of all pension, profit sharing, bonus, deferred compensation, severance pay, retirement, insurance or other employee benefit plans (as such

term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, hereinafter referred to as "ERISA") or agreements (other than the Birtcher Options and the plans creating same) binding upon any Birtcher Company (collectively, the "Benefit Plans"). Birtcher has complied with the material provisions of and has performed the material obligations required of it under such Benefit Plans, and Birtcher is not in default under any provision thereof in any manner which would permit any other party thereto to cancel or terminate such Benefit Plan. Except as set forth in the Birtcher Statements, Birtcher has not incurred any accumulated funding deficiency within the meaning of ERISA in connection with any of its Benefit Plans. All of such Benefit Plans are fully funded under the terms of such Benefit Plans and as required by ERISA, through and including the date of this Agreement. All of Birtcher's employee pension or profit sharing plans are qualified within the meaning of Section 401 of the Code, or Birtcher is presently qualifying such plans and such plans are eligible for qualification. None of the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of ERISA (and the equivalent provisions under the Code) have been violated with respect to any such Benefit Plans, other than a violation which would not subject any of the Birtcher Companies or their employees to liability under Title I of ERISA. Birtcher has complied with all of the reporting and disclosure requirements set forth in Part 1, Subtitle B, Title I of ERISA in all material respects. In addition, (i) no Benefit Plan that is subject to Title IV of ERISA has been terminated or partially terminated since September 2, 1974, (ii) no proceeding has been initiated to terminate any such Benefit Plan, (iii) no Birtcher Company has incurred or expected to incur any liability to the Pension Benefit Guaranty Corporation, (iv) there has been no "reportable event" within the meaning of Section 4043(b) of ERISA, (v) the present value of accrued benefits under all benefit plans subject to Title IV of ERISA did not exceed the market value of the assets of such plans as of the close of the most recent plan year of such plans, and (vi) no Benefit Plan is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA. None of the Birtcher Companies has any obligations for retiree health or life benefits under any Benefit Plan.

6.17 Customers. No Birtcher Company is aware of any facts evidencing that any of its significant customers intend to cease doing business with such Birtcher Company, or materially alter the amount of the business that such customers are presently doing with such Birtcher Company.

6.18 Employment Contracts. Set forth in the Birtcher Disclosure Letter is a list of all employment contracts, collective bargaining agreements, and agreements providing for director and officer indemnification or other agreements or arrangements providing for employee remuneration or benefits (other than the Birtcher Options or Benefit Plans) with any current or former employees to which any Birtcher Company is a party or by which any Birtcher Company is bound; all these contracts and arrangements are in full force and effect, and no Birtcher Company, nor any other party, is in default under any of them. There have been no claims of defaults and, to the best knowledge of the Birtcher Companies, there are not facts or conditions which if continued, or on notice, will result in a default under these contracts or arrangements. There is no pending, or to the best of their knowledge threatened, labor dispute, strike or work stoppage affecting or potentially affecting the business of any Birtcher Company.

6.19 Insurance Policies. Each Birtcher Company maintains (i) insurance on all its assets and businesses of a type customarily insured by similar companies in the same industry, covering property damage and loss of income by fire or other casualty, and (ii) adequate insurance protection against all liabilities, claims and risks against which it is customary to insure, including but not limited to product liability insurance. A list of all such policies, together with a true and correct copy of each policy, has been furnished to CONMED prior to the date of this Agreement.

6.20 Other Contracts. No Birtcher Company is a party to, nor is its property bound by, any distributor's or manufacturer's representative or agency agreement, any output or requirements agreement, any agreement not entered into in accordance with prudent business standards, or any agreement requiring the performance by any Birtcher Company of any obligation for a period of time extending beyond one year from the date hereof or calling for

consideration of more than \$5,000 per agreement or \$50,000 in the aggregate. There is no default or event which with notice or lapse of time, or both, would constitute a default by any party to any of these agreements. No Birtcher Company has received notice that any party to any of these agreements intends to cancel or terminate any of these agreements or to exercise or not exercise any options under any of these agreements. No Birtcher Company is a party to, nor is any Birtcher Company's property bound by, any agreement which is materially adverse to the business, properties or financial condition of such Birtcher Company. No Birtcher Company is a party to any agreement which: (i) prohibits such Birtcher Company from engaging in the business that it currently conducts, or upon consummation of the Merger, will prohibit such Birtcher Company from engaging in the business that it currently conducts, or (ii) will, upon consummation of the Merger, prohibit any CONMED Company from engaging in any business that such CONMED Company currently conducts.

6.21 Compliance with Laws. Each Birtcher Company has complied with, and is not in violation of, applicable federal, state or local statutes, laws and regulations (including, without limitation, any applicable building, zoning or other law, ordinance or regulation) affecting its properties or the operation of its business in any material way.

6.22 Litigation. There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, or to the best knowledge of the Birtcher Companies, threatened, against or affecting any Birtcher Company, or any of their respective businesses, assets, prospects or financial condition. The matters set forth in the Birtcher Disclosure Letter, except as otherwise specifically indicated thereon, if decided adversely to such Birtcher Company, will not result in a material adverse change in the business, assets, prospects or financial condition of such Birtcher Company. Birtcher has furnished or made available to CONMED copies of all relevant court papers and other documents relating to the matters set forth in the Birtcher Disclosure Letter. No Birtcher Company is in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

6.23 No Breach or Violation. The consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following: (i) a breach of any term or provision of this Agreement; (ii) a default or an event that, with notice or lapse of time or both, would be a default, breach or violation of the certificate or articles of incorporation or bylaws of any Birtcher Company or any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust or other agreement, instrument or arrangement to which any Birtcher Company is a party or by which any of them or the property of any of them is bound; (iii) an event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of any Birtcher Company; or (iv) the creation or imposition of any lien, charge or encumbrance on any of the properties of any Birtcher Company.

6.24 Authority. Birtcher has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any persons other than those of its shareholders specified herein, declaration by the SEC of effectiveness of the Registration Statement, and those listed in the Birtcher Disclosure Letter are necessary in connection with it. The execution and delivery of this Agreement by Birtcher has been duly authorized by its Board of Directors. This Agreement has been duly executed and delivered by Birtcher and is a legal, valid and binding obligation of Birtcher enforceable in accordance with its terms, except insofar as enforcement may be limited by (a) bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally, and (b) general principles of equity.

6.25 Interest in Customers, Suppliers and Competitors. No officer or director of any Birtcher Company, nor any spouse or child of any of them, has any direct or indirect interest in any competitor, supplier or customer of any Birtcher Company or in any person from whom or to whom such Birtcher Company leases any real or personal property, or in any other person with whom such Birtcher Company is doing business.

6.26 Corporate Documents. Birtcher has furnished to CONMED for its examination (i) true and correct copies of the certificate or articles of incorporation and bylaws of each Birtcher Company, or equivalent documents, as amended to date; (ii) true and correct copies of the contents of the minute book of each Birtcher Company (including proceedings of audit and other committees), each of which contain all records required to be set forth for all proceedings, consents, actions and meetings of the shareholders and board of directors of each Birtcher Company since January 1, 1988.

6.27 Permits. Each Birtcher Company has all permits, licenses, franchises and other authorizations necessary to the conduct of the business of such Birtcher Company in the manner and in the areas in which its business is presently being conducted, and all such permits, licenses, franchises, and authorizations are valid and in full force and effect. No Birtcher Company has engaged in any activity which could cause the revocation or suspension of any such permits, licenses, franchises, or authorizations and no actions or proceedings looking to or contemplating revocation or suspension of any thereof is pending or threatened. Birtcher has previously provided to CONMED a true and complete list of all permits, licenses, franchises, and other authorizations presently necessary to operate and conduct the business of each Birtcher Company.

6.28 Personnel. Birtcher has previously furnished to CONMED a true and complete list of the names and addresses of (i) all officers and directors of each Birtcher Company, describing all remuneration or compensation payable to each and (ii) all former officers and directors of each Birtcher Company to whom a Birtcher Company has a remuneration or compensation obligation, describing all remuneration or compensation payable to each.

6.29 Banking. Birtcher has previously furnished to CONMED a true and complete list of the names and addresses of all banks or other financial institutions in which any Birtcher Company has an account, deposit or safe deposit box, with a full description of such accounts and the names of all persons authorized to draw on these accounts or deposits or to access these boxes.

6.30 Environmental. "Environmental Laws" means all federal, state, and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances. "Hazardous Substances" means, without limitation, radon, radioactive materials, asbestos, urea formaldehyde form insulations, polychlorinated biphenyls, benzene, hazardous materials, flammable explosives, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended [42 U.S.C. ss. 9601 et seq.], the Resource Conservation and Recovery Act, as amended [42 U.S.C. ss. 6901 et seq.] or any other applicable Environmental Laws and the regulations adopted pursuant thereto and other Environmental Laws governing waste substances, and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives, whether proposed or promulgated, of any governmental authority with respect thereto. For purposes of this Section 6.30 and Section 8.11, the term "Birtcher Real Property" shall include all real property previously owned by any Birtcher Company and the term "Birtcher Leased Real Property" shall include all real property previously leased by any Birtcher Company.

(i) No Birtcher Real Property, and to the best knowledge of Birtcher, no Birtcher Leased Real Property or any real property adjacent to a tract of Birtcher Real Property or Birtcher Leased Real Property, has been or is being used for the storage, treatment, generation, transportation, processing, handling or disposal of any Hazardous Substance in violation of any Environmental Laws;

(ii) No release of a Hazardous Substance has occurred at any Birtcher Real Property or, to the best knowledge of Birtcher, at any Birtcher Leased Real Property or property adjacent to a tract of

Birtcher Real Property or Birtcher Leased Real Property;

(iii) No underground storage tanks are located on a tract of Birtcher Real Property or, to the best knowledge of Birtcher, Birtcher Leased Real Property;

(iv) There are no Hazardous Substances in or contaminating any of the land, buildings, structures, or other improvements constituting the Birtcher Real Property and, to the best knowledge of Birtcher, the Birtcher Leased Real Property;

(v) There are no Hazardous Substances in concentrations that exceed amounts permitted by Environmental Laws on any Birtcher Real Property or, to the best knowledge of Birtcher, any Birtcher Leased Real Property, or in any of the buildings, structures, or other improvements on such Birtcher Real Property or, to the best knowledge of Birtcher, Birtcher Leased Real Property; and

(vi) All permits required by Environmental Laws for the continued use and operation of the Birtcher Real Property or Birtcher Leased Real Property and the facilities located thereon (in the same manner as such real property has been used and operated by each Birtcher Company) have been obtained and are and have been complied with in accordance with their terms.

6.31 No Severance Payments. None of the Birtcher Companies will owe a severance payment or similar obligation to any of their respective current or former employees, officers or directors as a result of the Merger or the transactions contemplated by this Agreement, nor will any of such persons be entitled to an increase in severance payments or other benefits as a result of the Merger or the transactions contemplated by this Agreement in the event of the subsequent termination of their employment.

6.32 FDA Matters. The Birtcher Companies are in full compliance with all statutes, rules and regulations of the U.S. Food and Drug Administration ("FDA") with respect to manufacturing, marketing and sale of all of its products. The Birtcher Companies have all requisite FDA permits, approvals or the like to sell or manufacture such products. There are not be any pending or threatened actions or proceedings by the FDA which would prohibit or impede the sale of any product currently manufactured or sold by any of the Birtcher Companies into any market.

6.33 Registration Statement and Proxy Statement. When the Registration Statement or any post-effective amendment thereto shall become effective, and at all times subsequent to such effectiveness up to and including the Effective Time, such Registration Statement and the Prospectus/Proxy Statement and all amendments or supplements thereto, with respect to the form thereof and to all information set forth therein, including the fairness opinion of a financial advisor of Birtcher, which shall be attached as an appendix thereto, (other than relating to CONMED and the CONMED Entities), (i) will comply in all material respects with the requirements of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), respectively, and the rules and regulations of the SEC thereunder, and (ii) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading.

6.34 Truth of Warranties and Representations. All of the representations and warranties of Birtcher contained in this Agreement shall be true as of the date of this Agreement and shall be deemed to have been made again at and as of the Closing Date and the Effective Time, and shall then be true in all respects.

6.35 Full Disclosure. None of the representations and warranties made by Birtcher, or made in any certificate or memorandum furnished or to be furnished by any Birtcher Company, or on behalf of any Birtcher Company, contains or will contain any untrue statement of material fact, or omits any material fact the omission of which would be misleading.



## ARTICLE VII

### REPRESENTATION AND WARRANTIES OF CONMED COMPANIES

The CONMED Companies represent and warrant that, except as otherwise disclosed in the disclosure letter, dated the date hereof, from CONMED to Birtcher (the "CONMED Disclosure Letter"), which shall be accompanied by copies of all agreements or documents referred to therein:

7.01 Organization. CONMED is a corporation duly organized, validly existing and in good standing under the laws of New York. Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of California. Each CONMED Company has all necessary corporate powers to own its properties and to carry on its businesses as now owned and operated by it, and is duly qualified to do business and is in good standing in those jurisdictions in which the nature of the CONMED Companies' business or of their properties make such qualification necessary except for those jurisdictions where the failure to so qualify would not have a material adverse effect on such CONMED Companies' Business.

7.02 Capital of CONMED. The authorized capital stock of CONMED consists of 20,000,000 shares of common stock, having a par value of \$0.01 each, of which 4,011,800 were issued and outstanding as of October 31, 1994, and 500,000 shares of Preferred Stock, no par value, none of which are issued or outstanding. On November 22, 1994, the Board of Directors of CONMED approved a three-for-two stock split in the form of a stock dividend with respect to CONMED Common Stock, payable on December 27, 1994 to shareholders of record as of December 8, 1994. All of the shares of CONMED Common Stock are validly issued, fully paid and nonassessable. The only outstanding subscriptions, options, rights, warrants, convertible securities or other agreements or commitments which obligate CONMED to issue or to transfer from treasury additional shares of CONMED Common Stock are described in the CONMED Disclosure Letter.

7.03 Capital of Subsidiary. The authorized capital stock of Subsidiary consists of 1,000 shares of common stock, having a par value of \$.01 each, of which 100 shares are issued and outstanding (collectively, the "Subsidiary Common Stock") and owned of record by CONMED. All of the shares of Subsidiary Common Stock are validly issued, fully paid and nonassessable. There are no outstanding subscriptions, options, rights, warrants, convertible securities or other agreements or commitments that obligate Subsidiary to issue or to transfer from treasury additional shares of Subsidiary Common Stock.

7.04 Title to Assets. The CONMED Companies and the CONMED Subsidiaries (as hereinafter defined) have good and indefeasible title to all the assets and interests in assets, whether real, personal, mixed, tangible or intangible, used in the business of the CONMED Companies and the CONMED Subsidiaries (collectively, the "CONMED Entities" or singularly the "CONMED Entity"). All these assets are free and clear of restrictions on or conditions to transfer or assignment, and free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, easements, rights-of-way, covenants, conditions or restrictions, except for (i) those disclosed in CONMED's consolidated financial statements as of December 31, 1993, or otherwise thereafter included in the CONMED Statements (as hereinafter defined); (ii) any lien for current taxes not yet due and payable; and (iii) possible minor matters which, in the aggregate, are not substantial in the present or intended use of any of these assets and which do not materially impair business operations of the respective CONMED Entity. All real property and tangible personal property of each CONMED Entity is in good operating condition and repair, ordinary wear and tear excepted. No officer, director or employee of any CONMED Entity, nor any spouse, child or other relative of any of these persons, owns or has any interest, directly or indirectly, in any of the real or personal property owned by or leased to any CONMED Entity or any copyrights, patents, trademarks, trade names or trade secrets licensed by any CONMED Entity.

7.05 Subsidiaries. The CONMED Companies do not own, directly or indirectly, any interest or investment (whether equity or debt) in any

corporation, partnership, business, trust or other entity (such entities as are described in the CONMED Disclosure Letter are hereinafter referred to as the "CONMED Subsidiaries"). Each of the CONMED Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of its respective jurisdictions of organization as indicated on the CONMED Disclosure Letter, has all necessary corporate power to own its properties and to carry on its business as now owned and operated by it, and is duly qualified to do business and is in good standing in those other jurisdictions disclosed in the CONMED Disclosure Letter. These are the only jurisdictions in which the nature of the CONMED Subsidiaries' business or of their properties makes such qualification necessary except for those jurisdictions where the failure to so qualify would not have a material adverse effect on the business of such CONMED Subsidiary. All the issued and outstanding shares of capital stock of the CONMED Subsidiaries are validly issued, fully paid, and nonassessable, and are owned by the CONMED Companies or one of the CONMED Subsidiaries, free and clear of all liens, encumbrances, security agreements, equities, options, claims, charges and restrictions. The CONMED Companies or the CONMED Subsidiaries owning such stock have full power to transfer these shares without obtaining the consent or approval of any other person or governmental authority. There are no outstanding subscriptions, options, rights, warrants, convertible securities or other agreements or commitments obligating any of the CONMED Subsidiaries to issue or to transfer from treasury any additional shares of their capital stock of any class. There are no outstanding contractual obligations of the CONMED Companies or any of the CONMED Subsidiaries to repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests of the CONMED Companies or any of the CONMED Subsidiaries.

7.06 SEC Filings; Financial Statements and Certain Periodic Reports. The CONMED Companies have previously furnished to Birtcher true and complete copies of CONMED's Annual Reports on Form 10-K for fiscal years ended December 31, 1993, December 25, 1992 and December 26, 1991 (the "CONMED 10-Ks") which contain consolidated balance sheets of CONMED as of December 31, 1993, and the related consolidated balance sheets, statements of operations, shareholders' equity and cash flow for the three years ended on such dates (collectively, the "CONMED Financial Statements"), audited by Price Waterhouse LLP, CONMED's independent public accountants, whose reports with respect to such financial statements are included in the CONMED Financial Statements. In addition, CONMED has previously furnished to Birtcher true and complete copies of CONMED's Report on Form 10-Q for the fiscal quarter ended September 30, 1994, July 1, 1994 and April 1, 1994 (the "1994 10-Qs") including unaudited consolidated balance sheets of the CONMED Entities as of such dates and the related unaudited consolidated statements of income and cash flow for each of such periods ending on those dates (all of the foregoing being referred to as the "CONMED Unaudited Financial Statements"). The CONMED Financial Statements and the CONMED Unaudited Financial Statements (collectively, the "CONMED Statements") have been prepared in accordance with generally accepted accounting principles consistently applied by CONMED throughout all the periods indicated, and fairly present the financial position of the CONMED Entities as of the respective dates of the balance sheets included in the financial statements in all material respects, and the results of its operations for the respective periods indicated in all material respects. The CONMED 10-Ks and 1994 10-Qs (the "CONMED Reports") have been prepared and filed with the SEC in accordance with all applicable laws and requirements, and all of the information contained therein is true, complete and correct in all material respects.

7.07 Absence of Changes. Since December 31, 1993, and except as otherwise set forth or reflected in the CONMED Reports, there has not been any:

(i) Transaction by any of the CONMED Entities except in the ordinary course of business as conducted on that date;

(ii) Material adverse change in the financial condition, liabilities, assets, business or prospects of any CONMED Entity;

(iii) Destruction, damage to or loss of any asset of a CONMED Entity (whether or not covered by insurance) which materially and adversely affects the financial condition, business or prospects of

such CONMED Entity;

(iv) Labor trouble or other event or condition of any character materially and adversely affecting the financial condition, business, assets or prospects of any CONMED Entity;

(v) Change in accounting methods or practices (including, without limitation, any change in depreciation or amortization policies or rates) by any CONMED Entity;

(vi) Revaluation of any asset by any CONMED Entity;

(vii) Declaration, setting aside or payment of a dividend or other distribution in respect of the capital stock of any CONMED Entity, or any direct or indirect redemption, purchase or other acquisition by any CONMED Entity of any of its share of capital stock;

(viii) Mortgage, pledge or other encumbrances of any asset of any CONMED Entity;

(ix) Other event or condition of any character that has or might reasonably have a material and adverse effect on the financial condition, business, assets or prospects of any CONMED Entity;

(x) Sale or transfer of any asset by any CONMED Entity, except for the sale of inventory in the ordinary course of business;

(xi) Issuance or sale by any CONMED Entity of any shares of its capital stock of any class, or of any other of its securities, or options, warrants or rights therefor; or

(xii) Agreement by any CONMED Entity to do any of the things described in the preceding clauses (i) through (xi).

7.08 Liabilities. No CONMED Entity has any material liabilities, obligations or commitments of any nature, whether accrued absolute, contingent or otherwise, and whether due or to become due (herein "Liabilities") except (i) Liabilities which are adequately reflected or reserved against in the CONMED Statements, and (ii) Liabilities which have been incurred in the ordinary course of business and consistent with past practice since the date of the CONMED Statements or identified and reflected in the notes thereto.

7.09 Tax Matters. Within the times and in the manner prescribed by law, each CONMED Entity, and any consolidated, combined, unitary or aggregate group for tax purposes of which any CONMED Entity is or has been a member, has timely filed all Tax Returns required by law, and has paid all Taxes and has provided adequate reserves in the CONMED Statements for any Taxes that have not been paid but are properly accruable under generally accepted accounting principles, whether or not shown as being due on any returns. There are no present disputes as to taxes of any nature allegedly due or payable by any CONMED Entity. Except to the extent that the inaccuracy of any of the following, individually or in the aggregate, is not reasonably likely to have a material adverse effect on CONMED business, no claim for unpaid Taxes has become a lien or encumbrance of any kind against the property asserted against any CONMED Entity; no audit of any Tax Return of any CONMED Entity is being conducted by a tax authority; and no extension of the statute of limitations on the assessment of any Taxes has been granted by any CONMED Entity and is currently in effect.

7.10 Employee Benefit Plans. The CONMED Entities have complied with material provisions of and have performed the material obligations required of them under all pension, profit sharing, bonus, deferred compensation, severance pay, retirement, insurance or other employee benefit plans (as such term is defined in Section 3(3) of ERISA) or agreements binding upon any of the CONMED Entities (collectively, the "CONMED Benefit Plans"), and the CONMED Entities are not in default under any provision thereof in any manner which would permit any other party thereto to cancel or terminate such CONMED Benefit Plan. Except as set forth in the CONMED Statements, the CONMED Entities have not

incurred any accumulated funding deficiency within the meaning of ERISA in connection with any of its CONMED Benefit Plans. All of such CONMED Benefit Plans are fully funded under the terms of such CONMED Benefit Plans and as required by ERISA, through and including the date of this Agreement. All of the CONMED Entities' employee pension or profit sharing plans are qualified within the meaning of Code Section 401. None of the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of ERISA (and the equivalent provisions under the Code) have been violated with respect to any such CONMED Benefit Plans, other than a violation which would not subject any of the CONMED Entities or their employees to liability under Title I of ERISA. The CONMED Entities have complied with all of the reporting and disclosure requirements (including without limitation the filing of annual reports and distribution of summary plan descriptions) set forth in Part 1, Subtitle B, Title I of ERISA in all material respects. In addition: (i) no CONMED Benefit Plan that is subject to Title IV of ERISA has been terminated or partially terminated since September 2, 1974, no proceeding has been initiated to terminate any such CONMED Benefit Plan, no CONMED Entity has incurred or expects to incur any liability to the Pension Benefit Guaranty Corporation, and there has been no "reportable event" within the meaning of Section 4043(b) of ERISA; (ii) the present value of accrued benefits under all CONMED Benefit Plans subject to Title IV of ERISA did not exceed the market value of the assets of such plans as of the close of the most recent plan year of such plans; and (iii) no CONMED Benefit Plan is a "multi-employer plan" within the meaning of Section 4001(a)(3) of ERISA.

7.11 Customers. No CONMED Entity is aware of any facts evidencing that any of its significant customers intend to cease doing business with such CONMED Entity, or materially alter the amount of the business that such customers are presently doing with such CONMED Entity.

7.12 Employment Contracts. All employment contracts and collective bargaining agreements, and all pension, bonus, profit sharing, stock option or other agreements providing for employee remuneration or benefits to which any CONMED Entity is a party or by which any CONMED Entity is bound are in full force and effect, and no CONMED Entity, nor any other party is in default under any of them. There have been no claims of defaults and, to the best knowledge of the CONMED Entities, there are no facts or conditions which if continued, or on notice, will result in a default under these contracts or arrangements. There is no pending, or to the best of their knowledge threatened, labor dispute, strike or work stoppage affecting the business of any CONMED Entity.

7.13 Insurance Policies. Each CONMED Entity maintains (i) insurance on all its assets and businesses of a type customarily insured by similar companies in the same industry, covering property damage and loss of income by fire or other casualty, and (ii) adequate insurance protection against all liabilities, claims and risks against which it is customary to insure, including but not limited to product liability insurance.

7.14 Compliance with Laws. Each CONMED Entity has complied with, and is not in violation of, applicable federal, state or local statutes, laws and regulations (including, without limitation, any applicable building, zoning or other law, ordinance or regulation) affecting its properties or the operation of its businesses in any material way.

7.15 Litigation. There is no material suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or to the best knowledge of the CONMED Entities threatened, against or affecting any CONMED Entity, or any of their businesses, assets, prospects or financial condition. The matters set forth in the CONMED Disclosure Letter, except as otherwise specifically indicated thereon, if decided adversely to such CONMED Entity, will not result in a material adverse change in the business, assets, prospects or financial condition of such CONMED Entity. No CONMED Entity is in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

7.16 No Breach or Violation. The consummation of the transactions contemplated by this Agreement will not result in or constitute any

of the following: (i) a breach of any term or provision of this Agreement; (ii) a default or an event that, with notice or lapse of time or both, would be a default, breach or violation of the certificate or articles of incorporation or bylaws of any CONMED Entity or any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust or other agreement, instrument or arrangement to which any CONMED Entity is a party or by which any of them or the property of any of them is bound; (iii) an event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of any CONMED Entity; or (iv) the creation or imposition of any lien, charge or encumbrance on any of the properties of any CONMED Entity.

7.17 Authority. The CONMED Approval was obtained prior to the date of this Agreement. The CONMED Entities have the right, power, legal capacity and authority to enter into, and perform their respective obligations under this Agreement, and no approvals or consents of any persons other than the declaration by the SEC of effectiveness of the Registration Statement. This Agreement has been duly executed and delivered by the CONMED Companies and is a legal, valid and binding obligation of the CONMED Companies enforceable in accordance with its terms, except insofar as enforcement may be limited by (a) bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally, and (b) general principles of equity.

7.18 Permits. Each CONMED Entity has all permits, licenses, franchises and other authorizations necessary to the conduct of the business of such CONMED Entity in the manner and in the areas in which they are presently being conducted, all such permits, licenses, franchises, and authorizations are valid and in full force and effect. No CONMED Entity has engaged in any activity which could cause the revocation or suspension of any such permits, licenses, franchises, or authorizations and no actions or proceedings looking to or contemplating revocation or suspension of any thereof is pending or threatened.

7.19 Contracts. All contracts to which any of the CONMED Entities is a party are in full force and effect and binding in accordance with their respective terms, and none of such contracts precludes consummation of the transactions as contemplated herein. In addition, no event has occurred or condition exists which constitutes or which with notice or lapse of time, or both, would constitute, a default, breach, or violation by any party thereto.

7.20 Birtcher Stock. None of the CONMED Entities owns any Birtcher Capital Stock.

7.21 Leased Real Property. All the leases concerning each parcel of real property leased to any CONMED Entity ("CONMED Leased Real Property") are valid and in full force, and there does not exist any default by a CONMED Company, or event that with notice or lapse of time, or both, would constitute a default under any of these leases. To the best of the CONMED Companies' knowledge, there does not exist any default or event that with notice or lapse of time, or both, would constitute a default under any of the leases, by any person or entity other than a CONMED Company that is a party to any of such leases.

7.22 Zoning. The zoning, deed restriction or other land use provisions or restrictions of each parcel of real property owned by any CONMED Entity ("CONMED Real Property") or, to the best of the CONMED Companies' knowledge, CONMED Leased Real Property permit the presently existing improvements and the continuation of the business presently being conducted on such parcel.

7.23 Environmental. No CONMED Real Property, and to the best knowledge of the CONMED Companies, no CONMED Leased Real Property or any real property adjacent to a tract of CONMED Real Property or CONMED Leased Real Property, has been or is being used for the storage, treatment, generation, transportation, processing, handling or disposal of any Hazardous Substance in violation of any Environmental Laws;

(i) No CONMED Real Property, and to the best knowledge of

the CONMED Companies, no CONMED Leased Real Property or any real property adjacent to a tract of CONMED Real Property or CONMED Leased Real Property, has been or is being used for the storage, treatment, generation, transportation, processing, handling or disposal of any Hazardous Substance in violation of any Environmental Laws;

(ii) No release of a Hazardous Substance has occurred at any CONMED Real Property or, to the best knowledge of the CONMED Companies, at any CONMED Leased Real Property or property adjacent to a tract of CONMED Real Property or CONMED Leased Real Property;

(iii) No underground storage tanks are located on a tract of CONMED Real Property or, to the best knowledge of the CONMED Companies, CONMED Leased Real Property;

(iv) There are no Hazardous Substances in or contaminating any of the land, buildings, structures, or other improvements constituting the CONMED Real Property and, to the best knowledge of the CONMED Companies, the CONMED Leased Real Property;

(v) There are no Hazardous Substances in concentrations that exceed amounts permitted by Environmental Laws on any CONMED Real Property or, to the best knowledge of the CONMED Companies, any CONMED Leased Real Property, or in any of the buildings, structures, or other improvements on such CONMED Real Property or, to the best knowledge of the CONMED Companies, CONMED Leased Real Property; and

(vi) All permits required by Environmental Laws for the continued use and operation of the CONMED Real Property or CONMED Leased Real Property and the facilities located thereon (in the same manner as such real property has been used and operated by each CONMED Entity) have been obtained and are and have been complied with in accordance with their terms.

7.24 Trade Names and Rights. Each CONMED Entity has registered all trade names, trademarks, and service marks in all jurisdictions necessary to evidence ownership thereof and to permit such CONMED Entity to conduct its business in the way it is currently conducted, or otherwise has all rights or licenses necessary to use the same. No CONMED Entity has infringed, or is now infringing, on any trade name, trademark, or service mark belonging to any other person, firm or corporation. Each CONMED Entity owns, or holds adequate licenses or other rights to use, all trademarks, service marks, and trade names necessary for its business as now conducted by it, and its ownership and use do not, and will not, conflict with, infringe on or otherwise violate any rights of others.

7.25 Patents. Each CONMED Entity has patents or patent applications (the "CONMED Patents") and copyrights (the "CONMED Copyrights") registered in all jurisdictions necessary to evidence ownership thereof and to permit such CONMED Entity to conduct its business in the way it is currently conducted, or otherwise has all rights or licenses necessary to use the name. The CONMED Patents and CONMED Copyrights are valid and in full force and effect and are not subject to any taxes, maintenance fees or actions that have not been currently paid. There has not been any interference, action or other judicial, arbitration or other adversary proceeding concerning the CONMED Patents or the CONMED Copyrights. The manufacture, use, or sale of the inventions, models, designs and systems covered by the CONMED Patents or the CONMED Copyrights do not violate or infringe on any patent or any proprietary or personal right of any person, firm or corporation; and none of the CONMED Entities has infringed or is now infringing on any patent or other right belonging to any person, firm or corporation.

7.26 FDA Matters. The CONMED Entities are in full compliance with all statutes, rules and regulations of the FDA with respect to manufacturing, marketing and sale of all of its products. The CONMED Entities have all requisite FDA permits, approvals or the like to sell or manufacture such products. There are not be any pending or threatened actions or proceedings by the FDA which would prohibit or impede the sale of any product currently manufactured or sold by any of the CONMED Entities into any market.

7.27 Registration Statement and Proxy Statement. When the Registration Statement or any post-effective amendment thereto shall become effective, and at all times subsequent to such effectiveness up to and including the Effective Time, such Registration Statement and the Prospectus/Proxy Statement and all amendments or supplements thereto, with respect to the form thereof and to all information set forth therein (other than relating to Birtcher and the Birtcher Companies), (i) will comply in all material respects with the requirements of the Securities Act and the Exchange Act, respectively, and the rules and regulations of the SEC thereunder and (ii) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading.

7.28 Truth of Warranties and Representations. All of the representations and warranties of the CONMED Companies contained in this Agreement shall be true as of the date of this Agreement and shall be deemed to have been made again at and as of the Closing Date and the Effective Time, and shall then be true in all respects.

7.29 Full Disclosure. None of the representations and warranties made by the CONMED Companies, or made in any certificate or memorandum furnished or to be furnished by the CONMED Companies, or on their behalf, contains or will contain any untrue statement of material fact, or omits any material fact the omission of which would be misleading.

#### ARTICLE VIII

##### CERTAIN COVENANTS AND AGREEMENTS OF THE CORPORATIONS

8.01 Investigations and Operation of Business of Birtcher. Between the date of this Agreement and the Effective Time:

(a) Birtcher agrees to give to CONMED and its representatives and agents full access to all the premises and books and records of each of the Birtcher Companies, to cause the appropriate executive officers and other key management personnel of each of the Birtcher Companies on a daily basis to inform, and consult with, their designated counterparts at CONMED regarding all aspects of Birtcher's business and operations, and to cause their officers to promptly furnish to CONMED such financial and operating data and other information as CONMED shall from time to time request with respect to the business and properties of each of the Birtcher Companies; provided, however, that any such investigation (i) shall be conducted in such manner as not to interfere unreasonably with the operation of the businesses of the Birtcher Companies and (ii) shall not affect any of the representations and warranties hereunder. In the event the Merger is not consummated, CONMED will return all documents, work papers and other material obtained from the Birtcher Companies and their independent accountants in connection with the transactions contemplated hereby and will hold such material and business information derived therefrom confidential unless and until such material or the information contained therein becomes part of the public domain or is obtained from other sources.

(b) Except as otherwise specifically set forth herein, the Birtcher Companies will use their diligent efforts to:

(i) preserve intact the business organization of the Birtcher Companies, to keep available the services of the present officers and employees of the Birtcher Companies and to preserve the present relationships of the Birtcher Companies with persons having significant business relations therewith;

(ii) conduct their businesses only in accordance with prudent business standards;

(iii) maintain and keep their properties and equipment in good repair, working order and condition, except for ordinary wear and tear;

(iv) keep in full force and effect insurance comparable in amount and scope of coverage to that now maintained by them;

(v) perform in all material respects all of their obligations under all contracts and commitments applicable to their businesses or properties;

(vi) maintain their books of account and records in the usual and regular manner;

(vii) comply with all laws and regulations applicable to them and to the conduct of their businesses; and

(viii) advise CONMED promptly in writing of any material adverse change in the financial condition, results of operations, business or prospects of any of the Birtcher Companies and any event which could reasonably be expected to result in such a change.

(c) Except for the matters identified under Section 8.01 of the Birtcher Disclosure Letter, none of the Birtcher Companies will without the prior written consent of CONMED (which consent shall be given or withheld, as the case may be, within three business days of CONMED's receipt of Birtcher's written request therefor):

(i) issue or commit to issue any capital stock or other ownership interest, other than pursuant to the exercise of the outstanding Birtcher Options;

(ii) grant, commit to grant, or amend any options, warrants, convertible securities or other rights to subscribe for, purchase or otherwise acquire any shares of its capital stock or other ownership interest;

(iii) declare, set aside, or pay any dividend or distribution with respect to the capital stock or other ownership interest of any of the Birtcher Companies;

(iv) directly or indirectly redeem, purchase or otherwise acquire or commit to acquire any capital stock or other ownership interest of any of the Birtcher Companies or directly or indirectly terminate or reduce or commit to terminate or reduce any bank line of credit or the availability of any funds under any other loan or financing agreement, except as specifically required by the terms of such indebtedness;

(v) effect a split or reclassification of any capital stock of any of the Birtcher Companies or a recapitalization of any of the Birtcher Companies;

(vi) change the certificates or articles of incorporation, bylaws or other governing instruments of any of the Birtcher Companies;

(vii) enter into any license agreement, or any research and development agreements;

(viii) enter into any employment, consulting, agency, distribution or service agreement, contract or commitment with any person, or modify or cancel any such agreement, commitment or contract in effect on the date hereof, containing an obligation to pay or accrue any sum of money, provided that the foregoing restriction shall not apply to any hiring by the Birtcher Companies of persons to replace employees who have left the employ of such Birtcher Company in which no employment agreement specifying a minimum term of employment is entered into with such person;

(ix) enter into, modify or cancel, any agreement, contract or commitment relating to capital expenditures containing an obligation to



pay or accrue any sum of money;

(x) enter into, modify or cancel, any agreement, contract, indenture or other instrument relating to the borrowing of money or other contracting or payment of indebtedness or the guarantee of any obligation for the borrowing of money or other contracting or payment of indebtedness;

(xi) enter into, modify or cancel, any lease of real or personal property having a term of more than one year or containing an obligation to pay or accrue any sum of money;

(xii) enter into, modify or cancel, any agreement contract or commitment relating to the disposition or acquisition of any interest in any business enterprise;

(xiii) enter into, modify or cancel any other agreement, contract or commitment of any of the Birtcher Companies which is not terminable without payment of any sum of money by such Birtcher Company;

(xiv) merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all of the assets of, or otherwise acquire, any business or any business organization or division thereof, other than in connection with the Merger contemplated hereby, or in accordance with Section 11.01(e) below;

(xv) amend any Benefit Plan, except as required by law or as contemplated by this Agreement;

(xvi) settle or compromise any litigation involving a Birtcher Company;

(xvii) voluntarily take any action which will result in the representations contained in Article VI not being true and correct at the Closing Date or Effective Time; or

(xviii) undertake any action or fail to take any action, either of which may reasonably be expected to have an adverse effect on the financial position of any of the Birtcher Companies.

(d) CONMED and Birtcher, as the case may be, shall promptly notify the other of any action or inaction on the part of either of them or any other person which shall render inaccurate any of the respective representations and warranties contained herein.

8.02 Third Party Consents. Each Corporation shall use its diligent efforts to obtain the respective consents or approvals of each third party whose consent or approval is required for the consummation by the Corporations of the transactions contemplated hereby.

8.03 Amendments of Prospectus/Proxy Statement. Each of CONMED and Birtcher, promptly after becoming aware of any statement or omission which renders its representation and warranty set forth in Sections 6.33 and 7.27, respectively, not true and correct, will, after consultation with the other party, amend, supplement or revise the Registration Statement and the definitive Prospectus/Proxy Statement (and promptly furnish such amendment, supplement or revision to the other party) to make such representation and warranty true and correct in all material respects at all times up to and including the Effective Time.

8.04 Additional Financial Statements. Prior to the Mailing Date, within 20 days after the end of each calendar month Birtcher shall furnish to CONMED its interim financial statements for each month ending prior to the Effective Date. Not less than ten business days prior to the filing date of the Registration Statement, CONMED may require Birtcher to use its best efforts to cause Ernst & Young, L.L.P. to deliver to CONMED a report which shall contain such data and analysis with respect to certain amounts, percentages, numerical

data and other financial information pertaining to the Birtcher Companies as set forth in such interim financial statements, such report to contain such financial information and related comfort of the type that is customary in comfort letters delivered to an issuer or its underwriter in connection with the offering or sale of securities of an underwritten offering of securities of such issuer.

8.05 Consummation of the Merger. The Birtcher Companies will not, directly or indirectly, initiate contact with, invite or solicit any person or entity in an effort to solicit any takeover proposal, nor will the Birtcher Companies authorize any officer, director or employee of any Birtcher Company, or any investment banker, attorney, accountant or any representative retained by the Birtcher Companies, to directly or indirectly initiate any such contact. As used in this Section 8.05, "takeover proposal" shall mean any proposal for a merger or other business combination involving any of the Birtcher Companies or for the acquisition of a substantial equity interest in the Birtcher Companies or a substantial portion of any of the Birtcher Companies' assets other than the one contemplated by this Agreement. The Birtcher Companies will not cooperate or negotiate with, or furnish or cause to be furnished any non-public information concerning its business, properties or assets to, any person or entity in connection with any takeover proposal unless (i) such person or entity makes a bona fide written proposal with a reasonable probability of success that in the good faith judgment of the Birtcher Board of Directors (after consultation with Birtcher's financial advisor) is more favorable to the shareholders of Birtcher than the Merger and (ii) the Birtcher Board of Directors determines that to refuse to do so would violate such board's fiduciary duty to such shareholders. The Birtcher Companies shall promptly notify CONMED orally of, and confirm in writing, all relevant details relating to any takeover proposal which it may receive. The Corporations will use their diligent efforts to consummate the Merger by no later than March 1, 1995.

8.06 Listing of CONMED Common Stock. CONMED shall use its diligent efforts to obtain, prior to the Closing Date, approval for the listing on the NMS, subject to official notice of issuance, of the shares of CONMED Common Stock and the CONMED Common Stock issuable by CONMED by reason of assumption by CONMED of the Birtcher Options under Section 2.03 of this Agreement.

8.07 Filings and Approvals. There shall have been obtained any and all material permits, approvals and consents of securities or "blue sky" commissions or other agencies or commissions of any jurisdiction that are necessary so that the consummation of the Merger and the transactions contemplated thereby will be in compliance with applicable laws.

8.08 Corporate Action. Each Corporation shall, prior to the Effective Time, take all necessary action to perform its obligations under this Agreement.

8.09 Adjustments of CONMED Common Stock. The conversion ratios set forth herein are expressed to give effect to the three-for-two stock split in the form of a stock dividend declared by the CONMED Board of Directors with respect to CONMED Common Stock, payable on December 27, 1994 to shareholders of record as of December 8, 1994. If CONMED shall further effect a split, consolidation or reclassification of CONMED Common Stock outstanding after the date hereof but before the Effective Time, holders of the Birtcher Capital Stock shall have the right to receive in the Merger, and holders of Birtcher Options shall be entitled to purchase, such number of shares of CONMED Common Stock as they would have been entitled to receive or purchase, as the case may be, upon such split, consolidation or reclassification had the Merger been effective immediately prior to such split, consolidation or reclassification.

8.10 Cooperation; Satisfaction of Conditions. The Corporations shall (a) give assistance, to the extent within their control, to each other in the preparation of required filings and the seeking of required approvals in any manner reasonably requested and (b) use their diligent efforts to pursue, to the extent within their control, the satisfaction of all other conditions to the consummation of the Merger. Upon the fulfillment of all the conditions precedent to the obligations of the Corporations contained herein, the Corporations will,

forthwith cause to be executed and filed the Certified Agreement with the Secretary of State of California with respect to the Merger.

8.11 Environmental Site Assessments. The CONMED Companies (by their officers, employees and agents) at any time and from time to time may, but shall not have the obligation to, contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Birtcher Real Property and the Birtcher Leased Real Property for the purpose of determining whether there exists on the Birtcher Real Property or the Birtcher Leased Real Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances, as defined in Section 6.30 hereof. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Birtcher which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Birtcher Real Property and the Birtcher Leased Real Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Birtcher Real Property and the Birtcher Leased Real Property and such other tests on the Birtcher Real Property and the Birtcher Leased Real Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. The Birtcher Companies will supply to the Site Reviewers such historical and operational information regarding Birtcher's activities on the Birtcher Real Property and the Birtcher Leased Real Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, the CONMED Companies shall make the results of such Site Assessments fully available to Birtcher, which may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by CONMED. Regardless of whether CONMED elects to have the Site Assessments performed, there shall be no effect on the representation and warranty of Birtcher contained in Section 6.30 herein. CONMED agrees that all Site Assessments shall be required to be completed no later than December 31, 1994.

## ARTICLE IX

### CONDITIONS OF MERGER

9.01 Conditions of Obligations of the CONMED Companies. The obligations of the CONMED Companies to effect the Merger shall be subject to the following conditions:

(a) Representations and Warranties of Birtcher to be True; Performance by Birtcher. The representations and warranties of Birtcher herein contained shall be true and correct in all material respects at the Closing Date with the same effect as though made at such time (except insofar as such representations and warranties are given as of a particular date) except to the extent waived hereunder or affected by the transactions contemplated or permitted herein; the Birtcher Companies shall have performed in all material respects all obligations and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by them at or prior to the Closing Date; and Birtcher shall have delivered to CONMED a certificate of Birtcher in form and substance satisfactory to CONMED, dated the Closing Date and signed by Birtcher's President, to the knowledge of such officer after due inquiry, to all such effects.

(b) Registration and Listing of CONMED Common Stock. The Registration Statement shall be effective under the Securities Act and other applicable securities laws and shall not be the subject of any "stop order" or threatened "stop order"; and the NASD shall have approved for listing, subject to official notice of issuance, the shares of CONMED Common Stock and the shares of CONMED Common Stock issuable by CONMED under the Birtcher Options to be assumed pursuant to Section 2.03 of this Agreement.

(c) Approvals. The Birtcher Approval shall have occurred.

(d) No Legal Proceedings. No injunction shall have been obtained, or no suit, action or other proceeding shall be pending before any court or governmental agency, in which it is sought to restrain or prohibit the consummation of the transactions contemplated hereby, or in which it is sought to obtain damages in connection therewith, or involving a claim that the consummation of the transactions contemplated hereby would result in a violation of any law, decree or regulation of any government or agency thereof having jurisdiction, which suit, action or other proceeding would, in the opinion of independent counsel, acceptable to both parties, have a substantial likelihood of success. There shall not have been enacted, voted or promulgated by any legislative or administrative body having jurisdiction any legislation, ruling or decree which in the reasonable judgment of CONMED would be materially prejudicial to CONMED or Birtcher with respect to the transactions contemplated by this Agreement.

(e) Comfort Letters of Ernst & Young. If requested by CONMED, Ernst & Young, L.L.P. shall furnish CONMED with letters, dated the Mailing Date and the Closing Date, in form and substance satisfactory to CONMED, with respect to certain financial information regarding Birtcher in the form customarily issued by accountants at such time in transactions of this type.

(f) Statutory Requirements. All statutory requirements for the valid consummation by Birtcher of the transactions contemplated by this Agreement shall have been fulfilled; all authorizations, consents and approvals of all federal, state and local governmental agencies and authorities required to be obtained in order to permit consummation by Birtcher of the transactions contemplated by this Agreement and to permit the businesses presently carried on by the Birtcher Companies to continue unimpaired immediately following the Effective Time shall have been obtained and shall be in full force and effect.

(g) Opinion of Counsel of Birtcher. If requested by CONMED, Riordan & McKinzie, counsel for Birtcher, shall provide to CONMED an opinion, dated the Closing Date, as to the authorization, execution and delivery of this Agreement, the effectiveness of the Merger, the receipt of all necessary consents and approvals and such other matters as are usual and customary in transactions similar to the Merger and is satisfactory to CONMED's counsel.

(h) Required Consents. Birtcher shall have obtained the consent or approval of each person listed in the Birtcher Disclosure Letter pursuant to Section 6.23 and CONMED shall have obtained the consent of each of its lenders required under the terms of any applicable debt instruments related to outstanding indebtedness as of the Closing Date.

(i) Legend. The transfer agent for CONMED Common Stock shall have been instructed to place the following legend on each share certificate representing shares of such stock issued to each shareholder of Birtcher who under Rule 145 under the Securities Act may be deemed to be an affiliate of Birtcher immediately prior to the Merger:

"The sale of the shares represented by this certificate is not permitted unless effected in accordance with an exemption from the registration requirements of the Securities Act of 1933, as amended."

(j) Affiliate Agreements. Each Birtcher Affiliate who owns shares of Birtcher Capital Stock at the Effective Time shall have entered into an agreement in a form satisfactory to counsel for CONMED regarding such Birtcher Affiliate's holding and sale of CONMED Common Stock received as a result of the Merger and agreeing that in no event will any CONMED Common Stock be sold, except in compliance with the applicable provisions of the Securities Act and rules and regulations promulgated thereunder. CONMED shall not be required to maintain the effectiveness of the Registration Statement for the purpose of allowing resale of CONMED Common Stock by persons who may be "affiliates" of Birtcher under Rule 145 promulgated under the Securities Act.

(k) Resignations of Directors and Officers. There shall have

been delivered to CONMED the immediately effective written resignations of all of the directors of Birtcher and the Birtcher Companies and such officers of Birtcher and the Birtcher Companies as CONMED shall request.

(l) Insurance. Birtcher shall have in full force and effect policies of insurance from underwriters reasonably acceptable to CONMED covering general liability, product liability, automobile liability and professional liability providing coverage for such liabilities (i) in an amount at least equal to the coverage available to Birtcher as of June 30, 1994 and (ii) through at least June 30, 1995 other than insurance covering acts or omissions of officers or directors of Birtcher.

(m) No Material Adverse Change. Except for matters of a general economic or political nature, no event or series of events shall have occurred between September 30, 1994 and the Closing Date, the effect of which is or may reasonably be expected to be materially adverse to the business or financial condition of any of the Birtcher Companies taken as a whole other than the information already disclosed to CONMED by Birtcher pursuant to this Agreement. As of the date of this Agreement, Birtcher is not aware of any such event or series of events which would represent such a change from the information already disclosed.

(n) Other Documents. CONMED shall have received from Birtcher such other documents as it shall have reasonably requested.

(o) Corporate Approval. The execution and delivery of this Agreement by Birtcher and the performance of its covenants and obligations under it, shall have been duly authorized by all necessary corporate action, and CONMED shall have received a copy of all resolutions of the Birtcher Board of Directors pertaining to that authorization, certified by the secretary or assistant secretary of Birtcher. Promptly upon the Birtcher Approval, CONMED shall be furnished a copy of the resolutions adopted at the Birtcher Shareholders' Meeting, certified by the secretary or assistant secretary of Birtcher.

(p) Benefit Plans. All of the Benefit Plans shall have been terminated on or prior to the Closing Date without any liability to Birtcher or CONMED, except as disclosed in the Birtcher Disclosure Letter.

(q) Approval of Documents. The form and substance of all certificates, instruments, opinions and other documents delivered to CONMED under this Agreement shall be satisfactory in all reasonable respects to CONMED and its counsel.

(r) Appraisal Rights. Holders of not more than 10% of the Birtcher Common Stock and holders of not more than 20% of the Birtcher Preferred Stock shall have exercised any appraisal or dissenter's rights to which they may be entitled under the California Act.

To the extent permitted by applicable law or the terms of any agreement, CONMED may waive any or all of the foregoing conditions in whole or in part only in writing but without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by CONMED of any other conditions or of its other rights or remedies, at law or in equity, if Birtcher shall be in default of any of its representations, warranties or covenants under this Agreement.

9.02 Conditions of Obligations of Birtcher. The obligations of Birtcher to effect the Merger shall be subject to the following conditions:

(a) Representations and Warranties of the CONMED Companies to be True; Performance by CONMED Companies. The representations and warranties of the CONMED Companies herein contained shall be true and correct in all material respects at the Closing Date with the same effect as though made at such time (except insofar as such representations and warranties are given as of a particular date), except to the extent waived hereunder or affected by the transactions contemplated or permitted herein; each CONMED Company shall have performed in all material respects all obligations and complied in all material respects with all covenants and conditions required by this Agreement to be

performed or complied with it prior to the Closing Date; and each CONMED Company shall have delivered to Birtcher a certificate of each such CONMED Company in form and substance satisfactory to Birtcher, dated the Closing Date and signed by the President of each CONMED Company, to the knowledge of such officer after due inquiry, to all such effects.

(b) Registration and Listing of CONMED Common Stock. The Registration Statement shall be effective under the Securities Act and other applicable securities laws and shall not be the subject of any "stop order" or threatened "stop order"; and the NASD shall have approved for listing, subject to official notice of issuance, the shares of CONMED Common Stock and the shares of CONMED Common Stock issuable by CONMED under the Birtcher Options to be assumed pursuant to Section 2.03 of this Agreement.

(c) Approvals. The Birtcher Approval and the CONMED Approval shall have each occurred.

(d) No Legal Proceedings. No injunction shall have been obtained, or no suit, action or other proceeding shall be pending before any court or governmental agency, in which it is sought to restrain or prohibit the consummation of the transactions contemplated hereby, or in which it is sought to obtain damages in connection therewith, or involving a claim that the consummation of the transactions contemplated hereby would result in a violation of any law, decree or regulation of any government or agency thereof having jurisdiction, which suit, action or other proceeding would in the opinion of independent counsel, acceptable to both parties, have a substantial likelihood of success. There shall have not been enacted, voted or promulgated by any legislative or administrative body having jurisdiction any legislation, ruling or decree which in the reasonable judgment of Birtcher would be materially prejudicial to CONMED or Birtcher with respect to the transactions contemplated by this Agreement.

(e) Statutory Requirements. All statutory requirements for the valid consummation by the CONMED Companies of the transactions contemplated by the Agreement shall have been fulfilled; all authorizations, consents and approvals of all federal, state and local governmental agencies and authorities required to be obtained in order to permit consummation by the CONMED Companies of the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect.

(f) No Material Adverse Change. Except for matters of a general economic or political nature, no event or series of events shall have occurred between October 31, 1994 and the Closing Date, the effect of which is or may reasonably be expected to be materially adverse to the business or financial condition of either of the CONMED Companies taken as a whole other than the information already disclosed to Birtcher by the CONMED Companies pursuant to this Agreement. As of the date of this Agreement, CONMED is not aware of any such event or series of events which would represent such a change from the information already disclosed.

(g) Corporate Approval. The execution and delivery of this Agreement by each CONMED Company and the performance of its covenants and obligation under it, shall have been duly authorized by all necessary corporate action, and Birtcher shall have received a copy of all resolutions of the Board of Directors of each CONMED Company and the resolutions of the Board of Directors of each CONMED Company and the resolutions of the sole stockholder of Subsidiary pertaining to that authorization, certified by the secretary or assistant secretary of each CONMED Company.

(h) Approval of Documents. The form and substance of all certificate, instruments, opinions and other documents delivered to Birtcher under this Agreement shall be satisfactory (in their reasonable discretion) in all reasonable respects to Birtcher and its counsel.

To the extent permitted by applicable law or the terms of any agreement, Birtcher may waive any or all of the foregoing conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Birtcher of any other condition or of its other

rights or remedies, at law or in equity, if a CONMED Company shall be in default of any of its representations, warranties or covenants under this Agreement.

## ARTICLE X

### INDEMNIFICATION; SURVIVAL

SECTION 10.01 Indemnification; Directors' and Officers' Insurance. (a) For a period of three years from and after the Effective Time, CONMED agrees to indemnify and advance costs and expenses (including reasonable attorney fees, disbursements and expenses) and hold harmless each present and former director and officer of Birtcher or its subsidiaries and each officer or employee of Birtcher or its subsidiaries that is serving or has served as a director of another entity expressly at Birtcher's request or direction, determined as of the Effective Time (the "Indemnified Parties"), against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, settlements or liabilities (collectively, "Costs") incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that Birtcher would have been permitted under California law and its articles of incorporation or by-laws in effect on the date hereof to indemnify such person (and also advance expenses as incurred to the fullest extent permitted under applicable law provided the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification); provided that any determination required by law to be made with respect to whether an officer's or director's conduct complies with the standards set forth under California law and Birtcher's articles of incorporation and by-laws shall be made by independent counsel selected by the Indemnified Party.

(b) Any Indemnified Party wishing to claim indemnification under Section 10.1(a), upon learning of any such claim, action, suit, proceeding or investigation, shall promptly notify CONMED thereof, but the failure to so notify shall not relieve CONMED of any liability it may have to such Indemnified Party if such failure does not materially prejudice the indemnifying party. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time) other than such as is described in the Birtcher Statements, (i) CONMED shall have the right to assume the defense thereof and CONMED shall not be liable to such Indemnified Parties for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Parties in connection with the defense thereof, except that if CONMED elects not to assume such defense or counsel for the Indemnified Parties advises that there are issues which raise conflicts of interest between CONMED and the Indemnified Parties, the Indemnified Parties may retain counsel satisfactory to them, and CONMED shall pay the reasonable fees and expenses of such counsel for the Indemnified Parties promptly as statements therefor are received; provided, however, that CONMED shall be obligated pursuant to this paragraph (b) to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction unless the use of one counsel for such Indemnified Parties would present such counsel with a conflict of interest, (ii) the Indemnified Parties will cooperate in the defense of any such matter and (iii) CONMED shall not be liable for any settlement effected without its prior written consent which shall not be unreasonably withheld; and provided further that CONMED shall not have any obligation hereunder to any Indemnified Party when and if a court of competent jurisdiction shall ultimately determine, and such determination shall have become final and nonappealable, that the indemnification of such Indemnified Party in the manner contemplated hereby is prohibited by applicable law.

(c) For a period of three years after the Effective Time, CONMED shall use all reasonable efforts to cause to be maintained in effect the current policies of directors' and officers' liability insurance maintained by Birtcher (provided that CONMED may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are substantially no less advantageous to such directors and officers) with respect to claims arising from facts or events which occurred before the Effective Time;

provided, however, that in no event shall CONMED be obligated to expend, in order to maintain or provide insurance coverage pursuant to this Subsection 10.1(c), any amount per annum in excess of 200% of the amount of the annual premiums paid as of the date hereof by Birtcher for such insurance (the "Maximum Amount"). If the amount of the annual premiums necessary to maintain or procure such insurance coverage exceeds the Maximum Amount, CONMED shall use all reasonable efforts to maintain the most advantageous policies of directors' and officers' insurance obtainable for an annual premium equal to the Maximum Amount.

10.02 Survival of Representations and Warranties. All of the representations and warranties made by any of the Corporations as contained in Articles VI and VII hereof, except as otherwise specifically provided, notwithstanding any investigation made by or on behalf of any of the Corporations, shall expire immediately after the Closing.

## ARTICLE XI

### TERMINATION OF OBLIGATIONS AND WAIVERS OF CONDITIONS; PAYMENT OF EXPENSES

11.01 Termination of Agreement and Abandonment of Merger. Anything herein to the contrary notwithstanding, this Agreement and the Merger contemplated hereby may be terminated at any time before the Effective Date, whether before or after the Birtcher Approval or the CONMED Approval, as follows, and in no other manner:

(a) Mutual Consent. By mutual written consent of Birtcher and the CONMED Companies.

(b) Expiration Date. By either Birtcher or the CONMED Companies if the Merger shall not have become effective by September 30, 1995 (which date may be extended by mutual agreement of the Corporations); provided, however, that the Corporation seeking to terminate shall be in compliance with Section 8.10.

(c) CONMED Companies' Option. By the Board of Directors of any CONMED Company at any time after March 1, 1995, if, by that date, the conditions set forth in Section 9.01 hereof shall not have been met.

(d) Birtcher's Option upon Non-Satisfaction of Conditions. By the Board of Directors of Birtcher at any time after September 30, 1995, if, by that date, the conditions set forth in Section 9.02 hereof shall not have been met.

(e) Birtcher's or CONMED's Option upon Payment of Break-up Fee. Notwithstanding any other provision of this agreement, Birtcher shall have the right to consider bona fide written proposals with a reasonable probability of success from other responsible entities or individuals concerning the sale of all or a substantial part of Birtcher's stock, assets, business operations or the like that are fully financed and in good faith judgment of the Birtcher Board of Directors (after consultation with Birtcher's financial advisor) that are more favorable to the shareholders of Birtcher than the Merger (such potential transaction being hereinafter referred to as a "Birtcher Sale"). Notwithstanding anything to the contrary contained herein, Birtcher or CONMED may terminate this Agreement and Birtcher may pursue such a Birtcher Sale provided that concurrent with the earlier of such termination or prior to the execution of any letter of intent or definitive documentation with respect to such Birtcher Sale, Birtcher shall pay or cause to be paid (by the other party to the Birtcher Sale or otherwise) to CONMED a cash fee of \$1,000,000 as liquidated damages in consideration for CONMED's time and internal and third party costs and expenses associated therewith.

(f) CONMED Companies' Option upon Bankruptcy, Foreclosure or Acceleration of Indebtedness. By the Board of Directors of any CONMED Company if (i) there shall have been (a) the appointment of a receiver, trustee, custodian or liquidator of any Birtcher Company or any of their respective properties, (b)



a general assignment for the benefit of creditors with respect to any Birtcher Company, (c) with respect to any Birtcher Company, any filing of a voluntary or involuntary petition in bankruptcy, seeking reorganization, or to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or any other applicable state or federal law relating to bankruptcy, reorganization, arrangement or any other relief to debtors, or (d) an adjudication of bankruptcy with respect to any Birtcher Company, (ii) there shall have been instituted any foreclosure proceeding with respect to any material property or material asset of any Birtcher Company, or (iii) there shall have been an acceleration of the amounts due or a demand for payment with respect to the amounts payable under any indebtedness for money borrowed of any Birtcher Company.

11.02 Payment of Expenses; Waiver of Conditions. In the event that this Agreement shall be terminated pursuant to Section 11.01, all obligations of the Corporations hereto under this Agreement shall terminate upon termination of this Agreement (except the obligation to pay the fee set forth in Section 11.01(e) and (f)) and there shall be no liability of any Corporation to another (except by reason of default hereunder which has not been waived). Absent such default, each Corporation will pay all costs and expenses incident to its negotiation and preparation of this Agreement and all documents in connection therewith and to its performance of and compliance with all agreements and conditions contained herein or therein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel, its auditors and its investment bankers, provided, however, that the cost of printing this Agreement and the Registration Statement, including the Prospectus and definitive Proxy Statement, and any fees and expenses paid for solicitation of proxies in connection with the Birtcher Shareholders' Meeting, shall be borne equally by CONMED and Birtcher. If any of the conditions specified in Section 9.01 has not been satisfied, to the extent permitted by applicable law or the terms of any agreement, the CONMED Companies may nevertheless at their election proceed with the transactions contemplated hereby and, if any of the conditions specified in Section 9.02 has not been satisfied, to the extent permitted by applicable law or the terms of any agreement, Birtcher may nevertheless at its election proceed with the transactions contemplated hereby. Any such election to proceed shall be evidenced by a certificate executed on behalf of the electing party by its President.

11.03 Specific Performance. Each Corporation's obligations under this Agreement are unique. If any Corporation should default in its obligations under this Agreement, the Corporations each acknowledge that it would be extremely impracticable to measure the resulting damages; accordingly, the non-defaulting Corporation, in addition to any other available rights or remedies, may sue in equity for specific performance, and the Corporations each expressly waive the defense that a remedy in damage will be adequate. Notwithstanding any breach or default by any of the Corporations of any of their respective representations, warranties, covenants or agreements under this Agreement, if the purchase and sale contemplated by it shall be consummated at the Closing, each of the Corporations waives any rights that it may have to rescind this Agreement or the transaction consummated by it; provided, however, this waiver shall not effect any other rights or remedies available to the Corporations under this Agreement or under the law.

## ARTICLE XII

### GENERAL

12.01 Amendments. Subject to applicable law, this Agreement and any schedule and exhibit attached hereto, may be amended by an instrument in writing signed by an authorized officer of each of the Corporations hereto upon authorization by the Boards of Directors of the Corporations hereto before or after the Birtcher Shareholders' Meeting at any time prior to the Effective Time.

12.02 Schedules. Each Schedule delivered pursuant to the terms of this Agreement is in writing and has been initialed by the Chairman of the

Board, the President or one of the Vice Presidents of the delivering Corporation.

12.03 Further Instruments. Each Corporation agrees to execute and deliver such instruments and take such other action as shall be reasonably required, or as shall be reasonably requested by any other Corporation, in order to carry out the transactions, agreements and covenants contemplated in this Agreement, at or prior to the Effective Date.

12.04 Employee Benefits. Following the Merger, each of the employees of Birtcher or any of the Birtcher Companies who continues to be employed by CONMED or any of the CONMED Companies shall be entitled to receive such benefits, including but not limited to health insurance and participation in stock option and pension plans, as are from time to time generally available to employees of the CONMED Companies of similar position or responsibility. Any employee of Birtcher or any Birtcher Company who continues to be employed by CONMED shall be credited for any service with Birtcher or such Birtcher Company under any CONMED benefit plan, except that the date of commencement of service with respect to any defined benefit or pension plan shall be the Closing Date.

12.05 Publicity. CONMED and Birtcher agree that all press releases, announcements and other publicity concerning this Agreement and the Merger shall be subject to the prior approval of both of them; provided, however, that one party shall be permitted to issue a press release if in the opinion of counsel to such party such press release is required in order to maintain compliance with applicable federal or state laws or NASD rules or by-laws so long as the press release is contemporaneously given to the other party.

12.06 Brokerage Commissions and Other Fees. Birtcher hereby represents and warrants that Birtcher has not incurred any liability for, and does not know of any person or entity entitled to, any commission or finder's fee in connection with this Agreement or the transactions contemplated herein, other than the financial advisor retained by Birtcher to render a fairness opinion in connection with the Merger. The CONMED Companies hereby represent and warrant that the CONMED Companies have not incurred any liability for, and do not know of any person or entity entitled to, any commission or finder's fee in connection with this Agreement or the transactions contemplated herein.

12.07 Governing Law. This Agreement and the legal relations between the Corporations shall be governing by and construed in accordance with the laws of the State of New York.

12.08 Notices. Any notices or other communications required or permitted hereunder shall be written and shall be deemed sufficiently given if delivered personally or sent by registered mail or certified mail, postage prepared, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged) as follows:

If to the CONMED Companies:

CONMED Corporation  
310 Broad Street  
Utica, New York 13501  
Attention: Eugene R. Corasanti  
Chairman of the Board, Chief  
Executive Officer and President

Copy to:

Robert E. Rimmell  
Steates Rimmell Steates & Dziekan  
Bankers Trust Building  
185 Genesee Street  
Utica, New York 13501

If to Birtcher:

Birtcher Medical Systems, Inc.  
50 Technology Drive  
Irvine, California 92718  
Attention: David B. Jones  
Chairman of the Board and  
Chief Financial Officer

Copy to:

James W. Loss  
Riordan & McKinzie  
611 Anton Boulevard  
Suite 1160  
Costa Mesa, CA

or such other address as shall be furnished in writing by any of the parties.

12.09 No Assignment. This Agreement may not be assigned by operation of law or otherwise.

12.10 Headings. The descriptive headings of the several Articles, Sections and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Corporations hereto and delivered to each of the other Corporations hereto.

12.12 Waivers. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.13 Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Corporation or Corporations shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.14 Severability. If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

IN WITNESS WHEREOF, the Corporations have duly executed this Agreement as of the date first above written.

CONMED CORPORATION

By: /s/ Eugene R. Corasanti  
Eugene R. Corasanti,  
Chairman of the Board,  
Chief Executive Officer  
and President

CONMED ACQUISITION CORPORATION

By: /s/ Eugene R. Corasanti

Eugene R. Corasanti,  
Chairman of the Board,  
Chief Executive Officer  
and President

BIRTCHEER MEDICAL SYSTEMS, INC.

By: /s/ David B. Jones  
David B. Jones, Chairman of  
the Board and Chief  
Financial Officer

By: /s/ Kenneth C. Cleveland  
Kenneth C. Cleveland  
President and Chief  
Executive Officer

CREDIT AGREEMENT - TERM LOAN FACILITY

dated as of March 8, 1995

among

CONMED CORPORATION

the Banks signatory hereto

and

THE CHASE MANHATTAN BANK, N.A.

as Agent

TABLE OF CONTENTS

	Page
ARTICLE 1	DEFINITIONS; ACCOUNTING TERMS
Section 1.01	Definitions
Section 1.02	Accounting Terms
ARTICLE 2	THE CREDIT
Section 2.01	The Loans
Section 2.02	The Notes
Section 2.03	Purpose
Section 2.04	Borrowing Procedures
Section 2.05	Prepayments and Conversions
Section 2.06	Mandatory Prepayments
Section 2.07	Fixed Rate Loans - Interest Periods; Renewals
Section 2.08	Certain Notices
Section 2.09	Minimum Amounts
Section 2.10	Interest
Section 2.11	Fees
Section 2.12	Payments Generally
Section 2.13	Late Payment Fees
ARTICLE 3	YIELD PROTECTION; ILLEGALITY; ETC.
Section 3.01	Additional Costs
Section 3.02	Limitation on Types of Loans
Section 3.03	Illegality
Section 3.04	Certain Conversions
Section 3.05	Certain Compensation
Section 3.06	HLT Classification
ARTICLE 4	COLLATERAL SECURITY

Section 4.01 Security  
Section 4.02 Setoff  
Section 4.03 Guaranties

ARTICLE 5 CONDITIONS PRECEDENT

Section 5.01 Documentary Conditions Precedent  
Section 5.02 Additional Conditions Precedent  
Section 5.03 Closing of the Acquisitions  
Section 5.04 Deemed Representations

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Section 6.01 Incorporation, Good Standing and  
Due Qualification  
Section 6.02 Corporate Power and Authority;  
No Conflicts  
Section 6.03 Legally Enforceable Agreements  
Section 6.04 Litigation  
Section 6.05 Financial Statements  
Section 6.06 Ownership and Liens  
Section 6.07 Taxes  
Section 6.08 ERISA  
Section 6.09 Subsidiaries and Ownership of Stock  
Section 6.10 Credit Arrangements  
Section 6.11 Operation of Business  
Section 6.12 Hazardous Materials  
Section 6.13 No Default on Outstanding Judgments  
or Orders  
Section 6.14 No Defaults on Other Agreements  
Section 6.15 Labor Disputes and Acts of God  
Section 6.16 Governmental Regulation  
Section 6.17 Partnerships  
Section 6.18 No Forfeiture  
Section 6.19 Solvency  
Section 6.20 Cash Available

ARTICLE 7 AFFIRMATIVE COVENANTS 30

Section 7.01 Maintenance of Existence  
Section 7.02 Conduct of Business  
Section 7.03 Maintenance of Properties  
Section 7.04 Maintenance of Records  
Section 7.05 Maintenance of Insurance  
Section 7.06 Compliance with Laws  
Section 7.07 Right of Inspection  
Section 7.08 Reporting Requirements  
Section 7.09 Guaranties

ARTICLE 8 NEGATIVE COVENANTS

Section 8.01 Debt  
Section 8.02 Guaranties, Etc.  
Section 8.03 Liens  
Section 8.04 Leases  
Section 8.05 Loans; Investments  
Section 8.06 Dividends  
Section 8.07 Sale of Assets  
Section 8.08 Stock of Subsidiaries, Etc  
Section 8.09 Transactions with Affiliates  
Section 8.10 Mergers, Etc  
Section 8.11 Acquisitions  
Section 8.12 No Activities Leading to Forfeiture  
Section 8.13 New Businesses

ARTICLE 9 FINANCIAL COVENANTS

Section 9.01	Minimum Working Capital
Section 9.02	Minimum Tangible Net Worth
Section 9.03	Leverage Ratio
Section 9.04	Cash Flow Coverage Ratio
Section 9.05	Limitation on Debt

ARTICLE 10 EVENTS OF DEFAULT

Section 10.01	Events of Default
Section 10.02	Remedies

ARTICLE 11 THE AGENT; RELATIONS AMONG BANKS AND BORROWER

Section 11.01	Appointment, Powers and Immunities of Agent
Section 11.02	Reliance by Agent
Section 11.03	Defaults
Section 11.04	Rights of Agent as a Bank
Section 11.05	Indemnification of Agent
Section 11.06	Documents
Section 11.07	Non-Reliance on Agent and Other Banks
Section 11.08	Failure of Agent to Act
Section 11.09	Resignation or Removal of Agent
Section 11.10	Amendments Concerning Agency Function
Section 11.11	Liability of Agent
Section 11.12	Transfer of Agency Function
Section 11.13	Non-Receipt of Funds by the Agent
Section 11.14	Withholding Taxes
Section 11.15	Several Obligations and Rights of Banks
Section 11.16	Pro Rata Treatment of Loans, Etc
Section 11.17	Sharing of Payments Among Banks

ARTICLE 12 MISCELLANEOUS

Section 12.01	Amendments and Waivers
Section 12.02	Usury
Section 12.03	Expenses
Section 12.04	Survival
Section 12.05	Assignment; Participations
Section 12.06	Notices
Section 12.07	Jurisdiction; Immunities
Section 12.08	Table of Contents; Headings
Section 12.09	Severability
Section 12.10	Counterparts
Section 12.11	Integration
Section 12.12	Governing Law
Section 12.13	Confidentiality
Section 12.14	Treatment of Certain Information

EXHIBITS

Exhibit A	Promissory Note
Exhibit B	Authorization Letter
Exhibit C	Guaranty
Exhibit D	Security Agreement
Exhibit E	Opinion of Counsel for Borrower
Exhibit F	Opinion of Counsel for Each Third Party
Exhibit G	Confidentiality Agreement
Exhibit H	Borrowing Notice

SCHEDULES

Schedule I	Subsidiaries of Borrower
Schedule II	Credit Arrangements
Schedule III	Hazardous Materials

CREDIT AGREEMENT dated as of March 8, 1995 among CONMED CORPORATION, a corporation organized under the laws of the State of New York (the "Borrower"), each of the banks which is a signatory hereto (individually a "Bank" and collectively the "Banks") and THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), a national banking association organized under the laws of the United States of America, as agent for the Banks (in such capacity, together with its successors in such capacity, the "Agent").

The Borrower desires that the Banks extend credit as provided herein and the Banks are prepared to extend such credit. Specifically, the Borrower desires to borrow, and the Banks desire to lend to the Borrower on a term basis, the sum of \$30,000,000 in the event that the Target Acquisition (as defined herein) closes on or before May 1, 1995, or \$20,000,000 if the Target Acquisition does not close on or before such date. Accordingly, the Borrower, the Banks and the Agent agree as follows:

ARTICLE 1. DEFINITIONS; ACCOUNTING TERMS.

Section 1.01. Definitions. As used in this Agreement the following terms have the following meanings (terms defined in the singular to have a correlative meaning when used in the plural and vice versa):

"Account" means any right to payment for goods sold or leased or for services rendered, which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance, whether secured or unsecured, now existing or hereafter arising, and the proceeds thereof.

"Acquisitions" means the Birtcher Acquisition and the Target Acquisition.

"Affiliate" means any Person: (a) which directly or indirectly controls, or is controlled by, or is under common control with, the Borrower or any of its Subsidiaries; (b) which directly or indirectly beneficially owns or holds 15% or more of any class of voting stock of the Borrower or any such Subsidiary; (c) 15% or more of the voting stock of which is directly or indirectly beneficially owned or held by the Borrower or such Subsidiary; or (d) which is a partnership in which the Borrower or any of its Subsidiaries is a general partner. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agent's Office" means the principal office of Agent in Syracuse, New York, presently located at One Lincoln Center, Syracuse, New York 13202.

"Agreement" means this Credit Agreement, as amended or supplemented from time to time. References to Articles, Sections, Exhibits, Schedules and the like refer to the Articles, Sections, Exhibits, Schedules and the like of this Agreement unless otherwise indicated.

"Amortization Date" means the 1st day of each calendar quarter, commencing on the first day of July, 1995 and ending on the Final Maturity Date, provided that if any such day is not a Banking Day, such day shall be the next succeeding Banking Day.

"Authorization Letter" means the letter agreement executed by the Borrower in the form of Exhibit B.

"Banking Day" means any day on which commercial banks are not authorized or required to close in New York City and whenever such day relates to a Eurodollar Loan or notice with respect to any Eurodollar Loan, a day on which dealings in Dollar deposits are also carried out in the London interbank



market.

"Birtcher" means Birtcher Medical Systems, Inc., a California corporation.

"Birtcher Acquisition" means the merger of CONMED Acquisition Corporation, a wholly-owned subsidiary of Borrower, with and into Birtcher Medical Systems, Inc., with Birtcher becoming a wholly-owned subsidiary of Borrower, pursuant to the Plan and Agreement of Merger.

"Capital Expenditures" means for any period, the Dollar amount of gross expenditures (including obligations under Capital Leases) made for fixed assets, real property, plant and equipment, and all renewals, improvements and replacements thereto (but not repairs thereof) incurred during such period. Assets acquired in the Acquisitions shall not be considered "Capital Expenditures" for purposes of this Agreement.

"Capital Lease" means any lease which has been capitalized on the books of the lessee in accordance with GAAP.

"Cash Flow" (as distinguished from Measured Cash Flow) means the sum of the following measured on a consolidated basis for Borrower and any Subsidiaries, for any twelve month period ending on the last day of each of Borrower's fiscal quarters: (i) earnings before interest, taxes, depreciation, and amortization, minus (ii) Capital Expenditures.

"Cash Flow Coverage Ratio" means the ratio of Measured Cash Flow to Current Debt Service, measured on a consolidated basis for Borrower and its Subsidiaries for any twelve month period ending on the last day of each of Borrower's fiscal quarters.

"Chase" means The Chase Manhattan Bank, N.A.

"Closing Date" means the date this Agreement has been executed by the Borrower, the Banks and the Agent.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all personal property of Borrower and the Guarantors as set forth in Article 4 of this Agreement, together with any other property of Borrower and the Guarantors in which the Banks hereafter acquire a security interest or mortgage.

"Commitment" means, with respect to each Bank, the obligation of such Bank to make its Loan under this Agreement in the principal amount following:

If the Target Acquisition closes on or before May 1, 1995:

The Chase Manhattan Bank, N.A.: \$20,000,000.00 or \$11,250,000.00;1

Fleet Bank: \$10,000,000.00 or \$11,250,000.00;\*

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Total: \$30,000,000.00

If the Target Acquisition does not close on or before May 1, 1995:

The Chase Manhattan Bank, N.A.: \$10,000,000

Fleet Bank: \$10,000,000

Total: \$20,000,000

"Consolidated Capital Expenditures" means Capital Expenditures of the Borrower and its Consolidated Subsidiaries, as determined on a

consolidated basis in accordance with GAAP.

"Consolidated Current Assets" means Current Assets of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Current Liabilities" means Current Liabilities of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Subsidiary" means any Subsidiary whose accounts are or are required to be consolidated with the accounts of the Borrower in accordance with GAAP.

"Consolidated Tangible Net Worth" means Tangible Net Worth of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Total Liabilities" means all liabilities of Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Credit Agreement Revolving Credit Facility" means the Agreement of even date between Borrower and the Banks pursuant to which the Banks have agreed to make Revolving Credit Loans to Borrower.

"Current Assets" means all assets of the Borrower treated as current assets in accordance with GAAP.

"Current Debt Service" means current maturities of long term Debt.

"Current Liabilities" means all liabilities of the Borrower treated as current liabilities in accordance with GAAP, including without limitation (a) all obligations payable on demand or within one year after the date in which the determination is made and (b) installment and sinking fund payments required to be made within one year after the date on which determination is made, but excluding all such liabilities or obligations which are renewable or extendable at the option of the Borrower to a date more than one year from the date of determination.

"Debt" means, with respect to any Person: (a) indebtedness of such Person for borrowed money; (b) indebtedness for the deferred purchase price of property or services (except trade payables in the ordinary course of business); (c) Unfunded Benefit Liabilities of such Person (if such Person is not the Borrower, determined in a manner analogous to that of determining Unfunded Benefit Liabilities of the Borrower); (d) the face amount of any outstanding letters of credit issued for the account of such Person; (e) obligations arising under acceptance facilities; (f) guaranties, endorsements (other than for collection in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; (g) obligations secured by any Lien on property of such Person; and (h) obligations of such Person as lessee under Capital Leases.

"Default" means any event which with the giving of notice or lapse of time, or both, would become an Event of Default.

"Default Rate" means, with respect to the principal of any Loan and, to the extent permitted by law, any other amount payable by the Borrower under this Agreement or any Note that is not paid when due (whether at stated maturity, by acceleration or otherwise), a rate per annum during the period from and including the due date, to, but excluding the date on which such amount is paid in full equal to 2% above the Variable Rate as in effect from time to time plus the Margin (if any) (provided that, if the amount so in default is principal of a Fixed Rate Loan and the due date thereof is a day other than the last day of the Interest Period therefor, the "Default Rate" for such principal shall be, for the period from and including the due date and to

but excluding the last day of the Interest period therefor, 2% above the interest rate for such Loan as provided in Section 2.09 hereof and, thereafter, the Variable Rate plus 2% as provided for above in this definition).

"Dollars" and the sign "\$" mean lawful money of the United States of America.

"Drawdown Dates" means the closing dates of the Birtcher Acquisition and the Target Acquisition, on which the Borrower shall make the borrowings hereunder (which dates may not be later than the last day of the Drawdown Period).

"Drawdown Period" means the period commencing on the date hereof and ending on the Termination Date.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

"Equipment" means goods other than Inventory which are used or bought for use primarily in business, now existing or hereafter acquired, and the proceeds thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, including any rules and regulations promulgated thereunder.

"ERISA Affiliate" means any corporation or trade or business which is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which the Borrower is a member, or (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which the Borrower is a member.

"Eurodollar Loan" (i.e., a "LIBOR" Loan) means any Loan when and to the extent the interest rate therefor is determined on the basis of the definition "Fixed Base Rate."

"Event of Default" has the meaning given such term in Section 10.01.

"Facility Documents" means this Agreement and the Exhibits and Schedules hereto, the Notes, the Security Agreement, the Authorization Letter, and the Guaranty.

"Final Maturity Date" means April 1, 2000, when the final principal payment, all accrued interest, and any other amounts due under this Agreement or the Note shall be due and payable in full.

"Fixed Base Rate" means with respect to any Interest Period for a Fixed Rate Loan, i.e., for a Eurodollar Loan, the arithmetic mean, as calculated by the Agent, of the respective rates per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) quoted at approximately 11:00 a.m. London time by the principal London branch of the Reference Bank two Banking Days prior to the first day of such Interest Period for the offering to leading banks in the London interbank market of Dollar deposits in immediately available funds, for a period, and in an amount, comparable to the Interest Period and principal amount of the Eurodollar Loan which shall be made by such Reference Bank and outstanding during such Interest Period.

"Fixed Rate" means, for any Fixed Rate Loan for any Interest

Period therefor, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Agent to be equal to the quotient of (i) the Fixed Base Rate for such Loan for such Interest Period, divided by (ii) one minus the Reserve Requirement for such Loan for such Interest Period.

"Fixed Rate Loan" means any Eurodollar Loan.

"Fleet" means Fleet Bank.

"Forfeiture Proceeding" means any action, proceeding or investigation affecting the Borrower or any of its Subsidiaries or Affiliates before any court, governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or the receipt of notice by any such party that any of them is a suspect in or a target of any governmental inquiry or investigation, which may result in an indictment of any of them or the seizure or forfeiture of any of their property.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, applied on a basis consistent with those used in the preparation of the financial statements referred to in Section 5.05 (except for changes concurred in by the Borrower's independent certified public accountants).

"Guarantor" shall collectively mean all Subsidiaries and Affiliates of Borrower now or hereafter existing and their respective successors and assigns.

"Guaranty" means the guaranty in the form of Exhibit C to be delivered by each Guarantor under the terms of this Agreement.

"Interest Period" means, with respect to any Fixed Rate Loan, the period commencing on the date such Loan is made, converted from another type of Loan or renewed, as the case may be, and ending, as the Borrower may select pursuant to Section 2.07, on the numerically corresponding day in the first, second, third, or sixth calendar month thereafter, provided that each such Interest Period which commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate calendar month.

"Inventory" means goods held for sale or lease or to be furnished under contracts of service, or raw materials, work-in-process or materials used or consumed in a business, now existing or hereafter arising, and the proceeds thereof.

"Lending Office" means, for each Bank and for each type of Loan, the lending office of such Bank (or of an affiliate of such Bank) designated as such for such type of Loan on its signature page hereof or such other office of such Bank (or of an affiliate of such Bank) as such Bank may from time to time specify to the Agent and the Borrower as the office by which its Loans of such type are to be made and maintained.

"Letter of Intent" means the non-binding letter of intent (which has since been rescinded) between Borrower and Target dated November 9, 1994, a copy of which has been furnished to the Banks.

"Lien" means any lien (statutory or otherwise), security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any agreement to give any of the foregoing.

"Loan" means any loan made by a Bank pursuant to Section 2.01.

"Margin" means, for each Variable Rate Loan and Eurodollar Loan the applicable margin on the following table, computed as of the date of this Agreement based upon Borrower's financial statements for the immediately preceding four Quarterly Dates for income statement items and the most recent Quarterly Date for balance sheet items, and adjusted thereafter on each

Quarterly Date based on information for the immediately preceding four Quarterly Dates for income statement items and the immediately preceding Quarterly Date for balance sheet items.

Ratio of Total Funded Debt to Cash Flow	Ratio_1.5	1.5 ratio_2.5	2.5 ratio_3.5	3.5 ratio_4.0	Ratio 4.0
Applicable Margin - Fixed Rate Loans (Eurodollar)	112.5 basis points	137.5 basis points	162.5 basis points	187.5 basis points	250 basis points
Applicable Margin Variable Rate Loans (Prime)	0	12.5 basis points	37.5 basis points	62.5 basis points	125 basis points

The foregoing notwithstanding, it is agreed that from the date of this Agreement through March 31, 1996, the Applicable Margin for Fixed Rate Loans will be 162.5 basis points and the Applicable Margin for Variable Rate Loans will be 37.5 basis points.

"Measured Cash Flow" means the sum of the following measured on a consolidated basis for Borrower and any Subsidiaries, for any twelve month period ending on the last day of each of Borrower's fiscal quarters:

(a) net income, plus

(b) depreciation and all other non-cash charges to income not affecting working capital, minus

(c) Capital Expenditures.

"Multiemployer Plan" means a Plan defined as such in Section 3(37) of ERISA to which contributions have been made by the Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Note" means a promissory note of the Borrower in the form of Exhibit A hereto evidencing the Loans made by a Bank hereunder.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"Plan" means any employee benefit or other plan established or maintained, or to which contributions have been made, by the Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Plan and Agreement of Merger" means the agreement among Borrower, CONMED Acquisition Corporation and Birtcher Medical Systems, Inc. dated as of December 5, 1994.

"Prime Rate" means that rate of interest from time to time announced by the Reference Bank at its principal office as its prime commercial lending rate.

"Principal Office" means the principal office of the Reference Bank, presently located at 1 Chase Manhattan Plaza, New York, New York 10081.

"Quarterly Date" means the last day of each of Borrower's fiscal quarters for so long as the Commitment and any Loans made pursuant to this Agreement remain outstanding.

"Reference Bank" means The Chase Manhattan Bank, N.A.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

"Regulatory Change" means, with respect to any Bank, any change after the date of this Agreement in United States federal, state, municipal or foreign laws or regulations (including without limitation Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including such Bank of or under any United States, federal, state, municipal or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"Required Banks" means, at any time while no Loans are outstanding, Banks having at least 75% of the aggregate amount of the Commitments and, at any time while Loans are outstanding, Banks holding at least 75% of the aggregate principal amount of the Loans.

"Reserve Requirement" means, for any Interest Period for any Fixed Rate Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (i) any category of liabilities which includes deposits by reference to which the Fixed Base Rate for Eurodollar Loans is to be determined as provided in the definition of "Fixed Base Rate" in this Section 1.01 or (ii) any category of extensions of credit or other assets which include Eurodollar Loans.

"Revolving Credit Loans" means loans to Borrower made by the Banks pursuant to the Credit Agreement-Revolving Credit Facility.

"Security Agreement" means the security agreement in the Form of Exhibit D to be executed by Borrower and each Guarantor pursuant to Section 4.01 and 4.03 of this Agreement.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interests having ordinary voting power (absolutely or contingently) for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by such Person.

"Tangible Net Worth" means, at any date of determination thereof, the excess of total assets over total liabilities, excluding, however, from the determination of total assets: minority interests, if any, in Subsidiaries and the book value of intangible assets including, but not limited to, good will, organizational expenses, trademarks, trade names, licenses, patents, covenants not to compete, and capitalized research and development costs.

"Target" means the company identified in the Letter of Intent.

"Target Acquisition" means the purchase of substantially all of the assets of Target by Borrower (or a wholly-owned subsidiary of Borrower) on terms substantially similar (in the sole judgment of the Banks) to those set forth in the Letter of Intent.

"Termination Date" means May 1, 1995.

"Third Party" means a Guarantor.

"Total Funded Debt" means, with respect to Borrower and any Subsidiaries, all indebtedness (including current maturities) for money borrowed which by its terms matures more than one year from the date as of which such indebtedness is incurred, and any indebtedness for money borrowed maturing within one year from such date which is renewable or extendable at the option of the obligor to a date beyond one year from such date (whether or not theretofore renewed or extended), including any such indebtedness renewable or extendable at the option of the obligor under, or payable from the proceeds of other indebtedness which may be incurred pursuant to, the provisions of any revolving credit agreement or other similar agreement.

"Unfunded Benefit Liabilities" means, with respect to any Plan, the amount (if any) by which the present value of all benefit liabilities (within the meaning of Section 4001(a)(16) of ERISA) under the Plan exceeds the fair market value of all Plan assets allocable to such benefit liabilities, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA for calculating the potential liability of the Borrower or any ERISA Affiliate under Title IV of ERISA.

"Variable Rate" means, for any day, the Prime Rate for such day.

"Variable Rate Loan" means any Loan when and to the extent the interest rate for such Loan is determined in relation to the Variable Rate.

Section 1.02. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial data required to be delivered hereunder shall be prepared in accordance with GAAP. All terms relating to Collateral and not otherwise defined herein shall have the meanings ascribed to them in the Uniform Commercial Code of the State of New York.

## ARTICLE 2. THE CREDIT.

Section 2.01. The Loans. (a) Subject to the terms and conditions of this Agreement, each of the Banks severally agrees to make a loan (the "Loans") to the Borrower on each Drawdown Date. The total principal amount of Loans to be made on each Drawdown Date shall be as follows: (i) on the closing date of the Birtcher Acquisition, \$20,000,000; and (ii) on the closing date of the Target Acquisition, \$10,000,000. The amount of the Loan to be made by each Bank on the applicable Drawdown Date shall be such Bank's pro rata share (based upon the ratio of such Bank's Commitment to the total Commitments of all Banks hereunder) of the total amount of Loans made by all Banks to Borrower on such Drawdown Date. The Loans may be outstanding as Variable Rate Loans or Fixed Rate Loans (each a "type" of Loan). The type of Loans of each Bank shall be made and maintained at such Bank's Lending Office for such type of Loan.

(b) The principal of the Loans shall be due and payable in quarterly installments, as nearly equal as possible, on each Amortization Date. Interest on the Loans shall be due and payable as hereinafter provided.

(c) Any Term Loan borrowing under the existing Term Loan Facility made within thirty days prior to the date of this Agreement shall be deemed to be a Loan made pursuant to this Agreement.

Section 2.02. The Notes. The Loans of each Bank shall be evidenced by a single promissory note in favor of such Bank in the form of Exhibit A, dated the date of this Agreement, duly completed and executed by the Borrower.

Section 2.03. Purpose. The Borrower shall use the proceeds of the Loans to consummate the Birtcher Acquisition in accordance with the Plan and Agreement of Merger, to consummate the Target Acquisition on terms substantially similar (in the sole judgment of the Banks) to those set forth in the Letter of Intent, to pay fees, commissions, and expenses related to the Acquisitions, to

repay existing debt of Borrower to the Banks pursuant to that certain "Credit Agreement -- Term Loan Facility" and that certain "Credit Agreement -- Revolving Credit Facility" each dated as of July 9, 1993, for working capital, and for general corporate purposes. Such proceeds shall not be used for the purpose, whether immediate, incidental or ultimate, of buying or carrying "margin stock" within the meaning of Regulation U.

Section 2.04. Borrowing Procedures. The Borrower shall make the borrowings hereunder on each of the Drawdown Dates and shall give the Agent at least one Banking Day's notice of the date of each such borrowing (which shall be a Banking Day) if such date is not the last day of the Drawdown Period. Fixed Rate Loans shall require at least three Banking Days' prior notice. Not later than 1:00 p.m. New York City time on the date of each such borrowing, each Bank shall, through its Lending Office and subject to the conditions of this Agreement, make the amount of the Loan to be made by it on such day available to the Agent at the Agent's Office and in immediately available funds for the account of the Borrower. The amount so received by the Agent shall, subject to the conditions of this Agreement, be made available to the Borrower, in immediately available funds, by the Agent crediting an account of the Borrower designated by the Borrower and maintained with the Agent at the Agent's Office.

Section 2.05. Prepayments and Conversions. The Borrower shall have the right to make prepayments of principal, or to convert one type of Loan into another type of Loan, at any time or from time to time; provided that: (a) the Borrower shall give the Agent notice of each such prepayment or conversion as provided in Section 2.08; (b) Fixed Rate Loans may be prepaid or converted only on the last day of an Interest Period for such Loans; and (c) pre-payments shall be applied to the installments of principal in the inverse order of their maturities. Amounts prepaid may not be reborrowed.

Section 2.06. Mandatory Prepayments. Anything herein to the contrary notwithstanding, Borrower shall be obligated to make the following prepayments ("Mandatory Prepayment") of amounts outstanding hereunder at the times indicated below.

(a) 100% of the net proceeds in excess of \$100,000 received by Borrower from the sale or disposition of all or any part of the assets of Borrower or its Subsidiaries (other than in the ordinary course of business), upon Borrower's (or the Subsidiary's, as appropriate) receipt of such proceeds;

(b) 100% of all insurance proceeds received by Borrower which are not reasonably promptly applied toward repair or replacement of the damaged, destroyed or impaired property to which such proceeds relate, upon receipt by Borrower of such proceeds; and

(c) 30% of the proceeds of the sale by Borrower of any equity securities of Borrower (other than shares sold to employees pursuant to employee stock option plans), upon receipt by Borrower of such proceeds.

Any Mandatory Payments shall be applied without penalty or premium (other than costs associated with the mandatory prepayment of Fixed Rate Loans on dates other than the last day of the Interest Period with respect to each such Loan) as determined by the Banks in their sole discretion, provided that amounts allocated to payments of principal and interest due hereunder shall be allocated to such payments in their inverse order of maturity. Mandatory Prepayments shall be divided among the Banks based upon each Bank's pro rata share of the amounts outstanding hereunder at the time of the Mandatory Prepayment.

Section 2.07. Fixed Rate Loans-Interest Periods; Renewals. (a) In the case of each Fixed Rate Loan, the Borrower shall select an Interest Period of any duration in accordance with the definition of Interest Period in Section 1.01, subject to the following limitations: (i) no Interest Period may extend beyond an Amortization Date unless, after giving effect thereto, the aggregate principal amount of the Fixed Rate Loans having Interest Periods which end after such Amortization Date shall be equal to or less than the principal amount to be outstanding hereunder after such Amortization Date; (ii) notwithstanding clause (i) above, no Interest Period shall have a duration less



than one month, and if any such proposed Interest Period would otherwise be for a shorter period, such Interest Period shall not be available; (iii) if an Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day, unless such Banking Day would fall in the next calendar month in which event such Interest Period shall end on the immediately preceding Banking Day; (iv) only three Fixed Rate Interest Periods may be outstanding at any one time.

(b) Upon notice to the Agent as provided in Section 2.08, the Borrower may renew any Fixed Rate Loan on the last day of the Interest Period therefor as the same type of Loan with an Interest Period of the same or different duration in accordance with the limitations provided above. If the Borrower shall fail to give notice to the Agent of such a renewal, such Fixed Rate Loan shall automatically become a Variable Rate Loan on the last day of the current Interest Period.

Section 2.08. Certain Notices. All notices by the Borrower to the Agent pursuant to this Article 2 shall be given on a Banking Day and shall be given first by telephone and confirmed by telecopier. Such notices shall be irrevocable and shall be effective as of the date given only if the telecopy confirmation is received by the Agent not later than 1:00 p.m. New York City time. Where telecopy confirmation is received by the Agent after 1:00 p.m., the notice shall be deemed to be given as of the next Banking Day. In the case of borrowings and prepayments of, conversions into and renewals of (a) Variable Rate Loans, such notices shall be given one Banking Day prior thereto; and (b) in the case of Fixed Rate Loans, notices shall be given three Banking Days prior thereto. Each notice shall specify the type of Loan to be borrowed, converted, prepaid or renewed (and, in the case of a conversion, the type of Loans to result from such conversion and, in the case of Fixed Rate Loans, the Interest Period(s) therefor) and the date of the borrowing, prepayment, conversion or renewal (which shall be a Banking Day). Each notice of reduction or termination shall specify the amount of the Commitments to be reduced or terminated. Notices shall be similar in form to the attached Exhibit I. The Agent shall promptly notify the Banks of the contents of each such notice.

Section 2.09. Minimum Amounts. Except for prepayments or conversions which result in the prepayment or conversion of a particular type or conversions made pursuant to Section 3.04, each prepayment, conversion and renewal of principal of the Loan of a particular type shall be in an amount at least equal to \$500,000 for each Bank (prepayments, conversions or renewals of or into Loans of different types or, in the case of Fixed Rate Loans, having different Interest Periods at the same time hereunder to be deemed separate prepayments, conversions and renewals for the purposes of the foregoing, one for each type of Interest Period). Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of Fixed Rate Loans having concurrent Interest Periods shall be at least equal to \$500,000 for each Bank.

Section 2.10. Interest. (a) Interest shall accrue on the outstanding and unpaid principal amount of each Loan for the period from and including the date of such Loan to but excluding the date such Loan is due at the following rates per annum: (i) for a Variable Rate Loan, at a variable rate per annum equal to the Variable Rate plus any Margin and (ii) for a Fixed Rate Loan, at a fixed rate equal to the Fixed Rate plus the Margin. If the principal amount of any Loan and any other amount payable by the Borrower hereunder or under the Note shall not be paid when due (at stated maturity, by acceleration or otherwise), interest shall accrue on such amount to the fullest extent permitted by law from and including such due date to but excluding the date such amount is paid in full at the Default Rate.

(b) The interest rate on each Variable Rate Loan shall change when the Variable Rate changes and interest on each such Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Interest on each Fixed Rate Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Promptly after the determination of any interest rate provided for herein or any change therein, the Agent shall notify the Borrower and the Banks.

(c) Accrued interest shall be due and payable in arrears upon

any payment of principal or conversion and (i) for each Variable Rate Loan, on each Amortization Date; (ii) for each Fixed Rate Loan, on the last day of the Interest Period with respect thereto and, in the case of an Interest Period greater than three months, at three-month intervals (determined on the same basis as a three month Interest Period) after the first day of such Interest Period; provided that interest accruing at the Default Rate shall be due and payable from time to time on demand of the Agent.

Section 2.11. Fees. (a) The Borrower shall pay to the Agent for the account of each Bank a commitment fee on the daily average unused Commitment of such Bank for the period from and including the date hereof to the earlier of the date the Commitments are terminated or the Termination Date at a rate per annum equal to .375%, calculated on the basis of a year of 360 days for the actual number of days elapsed. The accrued commitment fee shall be due and payable when billed.

(b) The Borrower shall pay to the Agent as compensation for its services hereunder an agency fee (in cash or such other type of compensation as may be mutually agreed), in the amount (and on the dates) heretofore mutually agreed.

Section 2.12. Payments Generally. All payments under this Agreement or the Notes shall be made to the Agent in immediately available funds not later than 1:00 p.m. New York City time on the relevant dates specified in this Article 2, and each such payment made received by Agent after 1:00 p.m. shall be deemed to have been made on the next succeeding Banking Day. The Borrower shall, at the time of making each payment under this Agreement or the Notes, specify to the Agent the principal or other amount payable by the Borrower under this Agreement or the Notes to which such payment is to be applied (and in the event that it fails to so specify, or if a Default or Event of Default has occurred and is continuing, the Agent may apply such payment as it may elect in its sole discretion (subject to Section 11.16)). Borrower shall make all payments through its deposit account with Agent and Agent is hereby authorized to deduct all payments due hereunder from this account. Except as otherwise provided herein, if the due date of any payment under this Agreement or the Notes would otherwise fall on a day which is not a Banking Day, such date shall be extended to the next succeeding Banking Day and interest shall be payable for any principal so extended for the period of such extension. Provided the Agent receives payment in immediately available funds by 1:00 p.m. on a Banking Day, Agent shall remit the portion of such payment due to each of the Banks by wire transfer initiated prior to 3:00 p.m. on the same Banking Day. If payment is not received on a Banking Day or by 1:00 p.m., Agent shall remit the amount of such payment due Fleet by wire transfer on the next Banking Day.

Any Bank to which payment is due may (but shall not be obligated to) debit the amount of any such payment which is not made by 4:00 p.m. on the first Banking Day after the due date to any ordinary deposit account of the Borrower with such Bank and any Bank so doing shall promptly notify the Agent.

Section 2.13. Late Payment Fees. (a) If Borrower fails to make any payment when due, Agent, at the request of the Required Banks, may require the payment of a late charge to be assessed each day on the amount overdue based upon the following formulas:

(i) For overdue interest:

$$\frac{(\text{Amount overdue}) \times 110\% \times (\text{Prime Rate} + 2\%)}{365}$$

(ii) For overdue principal:

$$\frac{(\text{Amount overdue}) \times 110\% \times (\text{Prime Rate} + 2\%)}{365}$$

(b) Late charges may be added to the amount owing on any future payment, and such assessment and/or collection of late charges shall in no way impair the Banks' right to pursue any other rights or remedies they may

have upon default.

ARTICLE 3. YIELD PROTECTION; ILLEGALITY; ETC.

Section 3.01. Additional Costs. (a) The Borrower shall pay directly to each Bank from time to time on demand such amounts as such Bank may determine to be necessary to compensate it for any costs which such Bank determines are attributable to its making or maintaining any Fixed Rate Loans under this Agreement or its Note or its obligation to make any such Loans hereunder, or any reduction in any amount receivable by such Bank hereunder in respect of any such Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any Regulatory Change which: (i) changes the basis of taxation of any amounts payable to such Bank under this Agreement or its Note in respect of any of such Loans (other than taxes imposed on the overall net income of such Bank or of its Lending Office for any of such Loans by the jurisdiction in which such Bank has its principal office or such Lending Office); or (ii) imposes or modifies any reserve, special deposit, deposit insurance or assessment, minimum capital, capital ratio or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Bank (including any of such Loans or any deposits referred to in the definition of "Fixed Base Rate" in Section 1.01); or (iii) imposes any other condition affecting this Agreement or its Note (or any of such extensions of credit or liabilities). Each Bank will notify the Borrower of any event occurring after the date of this Agreement which will entitle such Bank to compensation pursuant to this Section 3.01(a) as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. If any Bank requests compensation from the Borrower under this Section 3.01(a), or under Section 3.01(c), the Borrower may, by notice to such Bank (with a copy to the Agent), require that such Bank's Loans of the type with respect to which such compensation is requested be converted in accordance with Section 3.04.

(b) Without limiting the effect of the foregoing provisions of this Section 3.01, in the event that, by reason of any Regulatory Change, any Bank either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Bank which includes deposits by reference to which the interest rate on Eurodollar loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Bank which includes Eurodollar loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, then, if such Bank so elects by notice to the Borrower (with a copy to the Agent), the obligation of such Bank to make or renew, and to convert Loans of any other type into, Loans of such type hereunder shall be suspended until the date such Regulatory Change ceases to be in effect (and all Loans of such type held by such Bank then outstanding shall be converted in accordance with Section 3.04).

(c) Without limiting the effect of the foregoing provisions of this Section 3.01 (but without duplication), the Borrower shall pay directly to each Bank from time to time on request such amounts as such Bank may determine to be necessary to compensate such Bank for any costs which it determines are attributable to the maintenance by it or any of its affiliates pursuant to any law or regulation of any jurisdiction or any interpretation, directive or request (whether or not having the force of law and whether in effect on the date of this Agreement or thereafter) of any court or governmental or monetary authority of capital in respect of its Loans hereunder or its obligation to make Loans hereunder (such compensation to include, without limitation, an amount equal to any reduction in return on assets or equity of such Bank to a level below that which it could have achieved but for such law, regulation, interpretation, directive or request). Each Bank will notify the Borrower if it is entitled to compensation pursuant to this Section 3.01(c) as promptly as practicable after it determines to request such compensation.

(d) Determinations and allocations by a Bank for purposes of this Section 3.01 of the effect of any Regulatory Change pursuant to subsections (a) or (b), or of the effect of capital maintained pursuant to subsection (c), on its costs of making or maintaining Loans or its obligation to make Loans, or

on amounts receivable by, or the rate of return to, it in respect of Loans or such obligation, and of the additional amounts required to compensate such Bank under this Section 3.01, shall be conclusive, provided that such determinations and allocations are made on a reasonable basis.

Section 3.02. Limitation on Types of Loans. Anything herein to the contrary notwithstanding, if:

(a) the Agent determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of "Fixed Base Rate" in Section 1.01 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining the rate of interest for any type of Fixed Rate Loans as provided in this Agreement; or

(b) the Required Banks determine (which determination shall be conclusive) and notify the Agent that the relevant rates of interest referred to in the definition of "Fixed Base Rate" in Section 1.01 upon the basis of which the rate of interest for any type of Fixed Rate Loans is to be determined do not adequately cover the cost to the Banks of making or maintaining such Loans;

then the Agent shall give the Borrower and each Bank prompt notice thereof, and so long as such condition remains in effect, the Banks shall be under no obligation to make or renew Loans of such type or to convert Loans of any other type into Loans of such type and the Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding Loans of the affected type, either prepay such Loans or convert such Loans into another type of Loans in accordance with Section 2.05.

Section 3.03. Illegality. Notwithstanding any other provision in this Agreement, in the event that it becomes unlawful for any Bank or its Lending Office to (a) honor its obligation to make or renew Eurodollar Loans hereunder or convert Loans of any type into Loans of such type, or (b) maintain Eurodollar Loans hereunder, then such Bank shall promptly notify the Borrower thereof (with a copy to the Agent) and such Bank's obligation to make or renew Eurodollar Loans and to convert other types of Loans into Loans of such type hereunder shall be suspended until such time as such Bank may again make, renew, or convert and maintain such affected Loans and such Bank's outstanding Eurodollar Loans, as the case may be, shall be converted in accordance with Section 3.04.

Section 3.04. Certain Conversions pursuant to Sections 3.01 and 3.03. If the Loans of any Bank of a particular type (Loans of such type being herein called "Affected Loans" and such type being herein called the "Affected Type") are to be converted pursuant to Section 3.01 or 3.03, such Bank's Affected Loans shall be automatically converted into Variable Rate Loans on the last day(s) of the then current Interest Period(s) for the Affected Loans (or, in the case of a conversion required by Section 3.01(b) or 3.03, on such earlier date as such Bank may specify to the Borrower with a copy to the Agent) and, unless and until such Bank gives notice as provided below that the circumstances specified in Section 3.01 or 3.03 which gave rise to such conversion no longer exist:

(a) to the extent that such Bank's Affected Loans have been so converted, all payments and prepayments of principal which would otherwise be applied to such Bank's Affected Loans shall be applied instead to its Variable Rate Loans;

(b) all Loans which would otherwise be made or renewed by such Bank as Loans of the Affected Type shall be made instead as Variable Rate Loans and all Loans of such Bank which would otherwise be converted into Loans of the Affected Type shall be converted instead into (or shall remain as) Variable Rate Loans; and

If such Bank gives notice to the Borrower (with a copy to the Agent) that the circumstances specified in Section 3.01 or 3.03 which gave rise to the conversion of such Bank's Affected Loans pursuant to this Section 3.04 no longer exist (which such Bank agrees to do promptly upon such circumstances

ceasing to exist) at a time when Loans of the Affected Type are outstanding, such Bank's Variable Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Loans of the Affected Type to the extent necessary so that, after giving effect thereto, all Loans held by the Banks holding Loans of the Affected Type and by such Bank are held pro rata (as to principal amounts, types and Interest Periods) in accordance with their respective Commitments.

Section 3.05. Certain Compensation. The Borrower shall pay to the Agent for the account of each Bank, upon the request of such Bank through the Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Bank) to compensate it for any loss, cost or expense which such Bank determines is attributable to:

(a) any payment, prepayment, conversion or renewal of a Fixed Rate Loan made by such Bank on a date other than the last day of an Interest Period for such Loan (whether by reason of acceleration, mandatory prepayment or otherwise); or

(b) any failure by the Borrower to borrow, convert into or renew a Fixed Rate Loan to be made, converted into or renewed by such Bank on the date specified therefor in the relevant notice under Section 2.04, 2.05 or 2.07, as the case may be.

Without limiting the foregoing, such compensation shall include an amount equal to the excess, if any, of: (i) the amount of interest which otherwise would have accrued on the principal amount so paid, prepaid, converted or renewed or not borrowed, converted or renewed for the period from and including the date of such payment, prepayment or conversion or failure to borrow, convert or renew to but excluding the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, convert or renew, to but excluding the last day of the Interest Period for such Loan which would have commenced on the date specified therefor in the relevant notice) at the applicable rate of interest for such Loan provided for herein; over (ii) the amount of interest (as reasonably determined by such Bank) such Bank would have bid in the London interbank market for Dollar deposits for amounts comparable to such principal amount and maturities comparable to such period. A determination of any Bank as to the amounts payable pursuant to this Section 3.05 shall be conclusive absent manifest error.

Section 3.06. HLT Classification. If, after the date hereof, the Agent is advised by any Bank that such Bank has received notice from any governmental authority, central bank or comparable agency having jurisdiction over such Bank that the definition of highly leveraged transaction has been modified with the result that its Loans hereunder are classified as a "highly leveraged transaction" (an "HLT Classification") or if the Borrower takes any action which causes this transaction to be subject to HLT Classification, the Agent shall promptly give notice of such HLT Classification to the Borrower and the other Banks and the Agent. The Banks and the Borrower shall commence negotiations in good faith to agree on whether and, if so, the extent to which commitment fees, interest rates and/or margins hereunder should be increased so as to reflect such HLT Classification. If the Borrower and the Required Banks fail to agree on such increases within 10 days after notice is given by the Agent as provided above, then (i) the Agent, if requested by the Required Banks shall, by notice to the Borrower immediately terminate the Commitments, and (ii) the Borrower shall be obligated to prepay on the date of such termination of the Commitments each outstanding Loan by paying the aggregate principal amount to be prepaid together with all accrued interest thereon to the date of such prepayment; provided that, if the Borrower prepays any Fixed Rate Loans pursuant to this clause, the Borrower shall compensate the Banks for any resulting funding losses. The Banks acknowledge that a HLT Classification is not a Default or an Event of Default hereunder.

#### ARTICLE 4. COLLATERAL SECURITY.

Section 4.01. Security. As security for the payment of all Loans made hereunder and for the obligations of each Guarantor under its

Guaranty, Borrower and the Guarantors hereby agree that the Banks shall at all times have, pursuant to a security agreement executed concurrently herewith in the form of Exhibit D, a continuing general security interest in all personal property of Borrower and each Guarantor as more fully described in the Security Agreement.

Section 4.02. Setoff. As additional collateral security for the payment of the Notes and of any and all other obligations and liabilities of Borrower and each Guarantor to the Banks hereunder, whether due or to become due, direct or contingent, now existing or hereafter arising, and however created or acquired, the Banks shall at all times have and are hereby given a security interest in and a lien upon and right of offset against all moneys, deposit balances, securities or other property or interest therein of Borrower now or at any time after the date of this Loan Agreement held or received by or for or left and each Guarantor in the possession or control of any of the Banks, whether for safekeeping, custody, transmission, collection, pledge or for any other or different purpose. The foregoing right of setoff shall at all times be subject to the Banks' obligation to share payments as set forth in Section 11.17.

Section 4.03. Guaranties. Each Guarantor shall execute and deliver a Guaranty to each of the Banks, and a Security Agreement granting the Banks a security interest in all of the Guarantor's personal property as set forth in Section 4.01.

#### ARTICLE 5. CONDITIONS PRECEDENT.

Section 5.01. Documentary Conditions Precedent. The obligations of the Banks to make the Loans are subject to the condition precedent that the Agent and the Banks shall have received on or before the date of such Loans each of the following, in form and substance satisfactory to the Agent, the Banks, and their counsel:

(a) the Notes duly executed by the Borrower;

(b) the Authorization Letter duly executed by the Borrower;

(c) the Security Agreements and UCC-1 Financing Statements duly executed by the Borrower and each Guarantor;

(d) the Guaranty duly executed by the Guarantor;

(e) a certificate of the Secretary or Assistant Secretary of the Borrower, dated the Closing Date, attesting to all corporate action taken by the Borrower, including resolutions of its Board of Directors authorizing the execution, delivery and performance of the Facility Documents to which it is a party and each other document to be delivered pursuant to this Agreement;

(f) a certificate of the Secretary or Assistant Secretary of the Borrower, dated the Closing Date, certifying the names and true signatures of the officers of the Borrower authorized to sign the Facility Documents to which it is a party and the other documents to be delivered by the Borrower under this Agreement;

(g) a certificate of a duly authorized officer of the Borrower, dated the Closing Date, stating that the representations and warranties in Article 6 are true and correct on such date as though made on and as of such date and that no event has occurred and is continuing which constitutes a Default or Event of Default;

(h) a favorable opinion of counsel for the Borrower, dated the Closing Date, in substantially the form of Exhibit E and as to such other matters as the Agent or any Bank may reasonably request;

(i) a certificate of the Secretary or Assistant Secretary of each Third Party, dated the Closing Date, attesting to all corporate action taken by the Third Party, including resolutions of its Board of Directors and

sole shareholder authorizing the execution, delivery and performance of the Facility Documents to which it is a party;

(j) a certificate of the Secretary or Assistant Secretary of each Third Party, dated the Closing Date, certifying the names and true signatures of the officers of each Third Party authorized to sign the Facility Documents to which it is a party;

(k) a favorable opinion of counsel for each Third Party dated the Closing Date, in substantially the form of Exhibit F and as to such other matters as the Agent or any Bank may reasonably request;

(l) a certificate of a duly authorized officer of each Third Party, dated the Closing Date, stating that the representations and warranties in the Facility Documents to which it is a party are true and correct on such date as though made on and as of such date and that no event has occurred and is continuing which constitutes a Default or Event of Default, and

(m) Certificates from the applicable Secretaries of State showing Borrower and each Third Party to be corporations in good standing in the States of their incorporation.

Section 5.02. Additional Conditions Precedent. The obligations of the Banks to make any Loans shall be subject to the further conditions precedent that on the date of such Loans:

(a) the following statements shall be true:

(i) the representations and warranties contained in Article 6 and in any other Facility Documents are true and correct on and as of the date of such Loans as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing, or would result from such Loans.

(b) The Banks shall have reviewed, and shall be satisfied with, the terms and conditions of, and the documentation relating to, the Acquisitions and the other transactions contemplated hereby. The Banks shall also have reviewed, and shall be satisfied with, the pro forma financial statements for the combined operations of Borrower, Birtcher Medical Systems, Inc. and Target as of the closing of each Acquisition.

(c) The Banks shall have reviewed, and shall be satisfied with, the Borrower's projections and pro forma financial statements reflecting the forecasted financial condition, income and expenses of the Borrower and its Subsidiaries after giving effect to each Acquisition, the borrowings under this Agreement, and any other transactions contemplated hereby, and the Banks' continuing satisfaction with the condition (financial and other), operations, assets, nature of assets, liabilities and prospects of the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(d) The Banks shall have reviewed, and shall be satisfied with (i) the Borrower's tax assumptions, and (ii) the corporate, organizational, capital, and legal structure of the Borrower, Birtcher Medical Systems, Inc., Target and their respective Subsidiaries.

(e) The Banks shall be satisfied that the borrowings under this Agreement and other funding for the Acquisitions are in full compliance with all legal requirements, including without limitation Regulations G, T, U and X of the Board of Governors of the Federal Reserve System, and that the Acquisitions are in compliance with all applicable legal requirements including, if applicable, the Hart-Scott-Rodino Act, and all securities law requirements.

(f) The Banks shall be satisfied that the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries comply in all material respects with all applicable U.S. federal, state and local laws and regulations, including all Environmental Laws.

(g) The Banks shall have reviewed, and shall be satisfied with an environmental risk assessment (including the potential levels of environmental liability set forth therein) with respect to Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(h) The Banks shall have reviewed, and shall be satisfied with, the insurance program of the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(i) The Banks shall have reviewed, and shall be satisfied with, all financial information concerning each Acquisition furnished to Borrower pursuant to the agreements memorializing the Acquisitions.

(j) The Banks shall have reviewed, and shall be satisfied with, information concerning any litigation relating to or arising out of either of the Acquisitions or any of the other transactions contemplated by this Agreement.

(k) the Agent shall have received such other approvals, opinions or documents as the Agent or any Bank may reasonably request.

Section 5.03. Closing of the Acquisitions. The obligations of the Banks to make any Loans hereunder shall be subject to the further conditions precedent that (a) with respect to Loans to be made on the closing date of the Birtcher Acquisition, all conditions to such Acquisition set forth in Article IX of the Plan and Agreement of Merger shall have been satisfied and all deliveries and payments to take place at the closing as specified in the Plan and Agreement of Merger shall have taken place except for the delivery of funds to be provided by the Banks pursuant to this Agreement and the commitments; and (b) with respect to Loans to be made on the closing date of the Target, all conditions to such Acquisition as the same may be set forth in a definitive asset purchase agreement between Borrower and Target, on substantially the same terms (in the sole judgment of the Banks) as those contained in the Letter of Intent, shall have been satisfied and all deliveries and payments to take place at the closing as may be specified in such agreement shall have taken place except for the delivery of funds to be provided by the Banks pursuant to this Agreement and the commitments. The fulfillment of these conditions precedent shall be demonstrated to the satisfaction of Agent, the Banks, and their Counsel and Agent and the Banks shall be entitled to receive such confirming certificates, legal opinions, and documents as Agent or any Bank may reasonably request.

Section 5.04. Deemed Representations. Each notice of borrowing hereunder and acceptance by the Borrower of the proceeds of such borrowing shall constitute a representation and warranty that the statements contained in Section 5.02(a) and 5.03 are true and correct both on the date of such notice and, unless the Borrower otherwise notifies the Agent prior to such borrowing, as of the date of such borrowing.

#### ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

The Borrower hereby represents and warrants that:

Section 6.01. Incorporation, Good Standing and Due Qualification. Each of the Borrower and its Subsidiaries is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 6.02. Corporate Power and Authority; No Conflicts. The execution, delivery and performance by the Borrower of the Facility Documents to which it is a party have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of its stockholders; (b) contravene its charter or by-laws; (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation (including, without limitation, Regulation U), order, writ,



judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower or any of its Subsidiaries or Affiliates; (d) result in a breach of or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Borrower is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by the Borrower; or (f) cause the Borrower (or any Subsidiary or Affiliate, as the case may be) to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 6.03. Legally Enforceable Agreements. Each Facility Document to which the Borrower is a party is, or when delivered under this Agreement will be, a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 6.04. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened, against or affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Borrower or any such Subsidiary or of the ability of the Borrower to perform its obligations under the Facility Documents to which it is a party.

Section 6.05. Financial Statements. The consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as at December 30, 1994, and the related consolidated income statement and statements of cash flows and changes in stockholders' equity of the Borrower and its Consolidated Subsidiaries for the fiscal year then ended, and the accompanying footnotes, together with the opinion thereon, of Price Waterhouse LLP, independent certified public accountants, copies of which have been furnished to each of the Banks, are complete and correct and fairly present the financial condition of the Borrower and its Consolidated Subsidiaries as at such date and the results of the operations of the Borrower and its Consolidated Subsidiaries for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to adjustments under Financial Accounting Standards 106 and 109). There are no liabilities of the Borrower or any of its Consolidated Subsidiaries, fixed or contingent, which are material but are not reflected in the financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business since December 30, 1994. No information, exhibit or report furnished by the Borrower to the Banks in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not materially misleading. Since December 30, 1994, there has been no material adverse change in the condition (financial or otherwise), business, operations or prospects of the Borrower or any of its Subsidiaries.

Section 6.06. Ownership and Liens. Each of the Borrower and its Consolidated Subsidiaries has title to, or valid leasehold interests in, all of its properties and assets, real and personal, including the properties and assets, and leasehold interests reflected in the financial statements referred to in Section 6.05 (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Borrower or any of its Subsidiaries and none of its leasehold interests is subject to any Lien, except as disclosed in such financial statements or as may be permitted hereunder.

Section 6.07. Taxes. Each of the Borrower and its Subsidiaries has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. The federal income tax liability of the Borrower and its Subsidiaries has been audited by the Internal Revenue Service and has been finally determined and satisfied for all taxable years up to and including the taxable year ended in 1990.

Section 6.08. ERISA. Each Plan, and, to the best knowledge of the Borrower, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other applicable Federal or state law, and no event or condition is occurring or exists concerning which the Borrower would be under an obligation to furnish a report to the Bank in accordance with Section 7.08(h) hereof. The funded status of each Plan is as set forth in Schedule IV.

Section 6.09. Subsidiaries and Ownership of Stock. Schedule I is a complete and accurate list of the Subsidiaries of the Borrower, showing the jurisdiction of incorporation or organization of each Subsidiary and showing the percentage of the Borrower's ownership of the outstanding stock or other interest of each such Subsidiary. All of the outstanding capital stock or other interest of each such Subsidiary has been validly issued, is fully paid and nonassessable and is owned by the Borrower free and clear of all Liens.

Section 6.10. Credit Arrangements. Schedule II is a complete and correct list of all credit agreements, indentures, installment purchase agreements, guaranties, Capital Leases and other investments, agreements and arrangements presently in effect providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Borrower or any of its Subsidiaries is in any manner directly or contingently obligated; and the maximum principal or face amounts of the credit in question, outstanding and which can be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefor are correctly described or indicated in such Schedule.

Section 6.11. Operation of Business. Each of the Borrower and its Subsidiaries possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, necessary to conduct its business substantially as now conducted and as presently proposed to be conducted, and neither the Borrower nor any of its Subsidiaries is in violation of any valid rights of others with respect to any of the foregoing.

Section 6.12. Hazardous Materials. The Borrower and each of its Subsidiaries have obtained all permits, licenses and other authorizations which are required under all Environmental Laws, except to the extent failure to have any such permit, license or authorization would not have a material adverse effect on the consolidated financial condition, operations, business or prospects of the Borrower and its Consolidated Subsidiaries. The Borrower and each of its Subsidiaries are in compliance with the terms and conditions of all such permits, licenses and authorizations, and are also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent failure to comply would not have a material adverse effect on the consolidated financial condition, operations, business or prospects of the Borrower and its Consolidated Subsidiaries.

In addition, except as set forth in Schedule III hereto:

(a) No notice, notification, demand, request for information, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by the Borrower or any of its Subsidiaries to have any permit, license or authorization required in connection with the conduct of the business of the Borrower or any of its Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, release or disposal, or any release as defined in 42 U.S.C. ss. 9601(22) ("Release"), of any substance regulated under Environmental Laws ("Hazardous Materials") generated by the Borrower or any of its Subsidiaries.

(b) Neither the Borrower nor any of its Subsidiaries has handled any Hazardous Material, other than as a generator, on any property now

or previously owned or leased by the Borrower or any of its Subsidiaries to an extent that it has, or may reasonably be expected to have, a material adverse effect on the consolidated financial condition, operations, business or prospects taken as a whole of the Borrower and its Consolidated Subsidiaries; and

(i) no polychlorinated biphenyl is or has been present at any property now or previously owned or leased by the Borrower or any of its Subsidiaries;

(ii) no asbestos is or has been present at any property now or previously owned or leased by the Borrower or any of its Subsidiaries;

(iii) there are no underground storage tanks for Hazardous Materials, active or abandoned, at any property now or previously owned or leased by the Borrower or any of its Subsidiaries; and

(iv) no Hazardous Materials have been Released, in a reportable quantity, where such a quantity has been established by statute, ordinance, rule, regulation or order, at, on or under any property now or previously owned by the Borrower or any of its Subsidiaries.

(c) Neither the Borrower nor any of its Subsidiaries has transported or arranged for the transportation of any Hazardous Material to any location which is listed on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), listed for possible inclusion on the National Priorities List by the Environmental Protection Agency in the Comprehensive Environmental Response and Liability Information System as provided by 40 C.F.R. ss. 300.5 ("CERCLIS") or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which may lead to claims against the Borrower or any of its Subsidiaries for clean-up costs, remedial work, damages to natural resources or for personal injury claims, including, but not limited to, claims under CERCLA.

(d) No Hazardous Material generated by the Borrower or any of its Subsidiaries has been recycled, treated, stored, disposed of or released (as defined in CERCLA) by the Borrower or any of its Subsidiaries at any location other than those listed in Schedule III hereto.

(e) No oral or written notification of a Release of a Hazardous material has been filed by or on behalf of the Borrower or any of its Subsidiaries and no property now or previously owned or leased by the Borrower or any of its Subsidiaries is listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS or on any similar state list of sites requiring investigation or clean-up.

(f) There are no Liens arising under or pursuant to any Environmental Laws on any of the real property or properties owned or leased by the Borrower or any of its Subsidiaries, and no government actions have been taken or are in process which could subject any of such properties to such Liens and neither the Borrower nor any of its Subsidiaries would be required to place any notice or restriction relating to the presence of Hazardous Materials at any property owned by it in any deed to such property.

(g) There have been no environmental investigations, studies, audits, test, reviews or other analyses conducted by or which are in the possession of the Borrower or any of its Subsidiaries in relation to any property or facility now or previously owned or leased by the Borrower or any of its Subsidiaries which have not been made available to the Banks.

Section 6.13. No Default on Outstanding Judgments or Orders. Each of the Borrower and its Subsidiaries has satisfied all judgments and neither the Borrower nor any of its Subsidiaries is in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

Section 6.14. No Defaults on Other Agreements. Neither the Borrower nor any of its Subsidiaries is a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations or conditions, financial or otherwise, of the Borrower or any of its Subsidiaries, or the ability of the Borrower or any of its Subsidiaries to carry out its obligations under the Facility Documents to which it is a party. Neither the Borrower nor any of its Subsidiaries is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument material to its business to which it is a party.

Section 6.15. Labor Disputes and Acts of God. Neither the business nor the properties of the Borrower or of any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), materially and adversely affecting sub business or properties or the operation of the Borrower or such Subsidiary.

Section 6.16. Governmental Regulation. Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Interstate Commerce Act, the Federal Power Act or any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 6.17. Partnerships. Neither the Borrower nor any of its Subsidiaries is a partner in any partnership.

Section 6.18. No Forfeiture. Neither the Borrower nor any of its Subsidiaries or Affiliates is engaged in or proposes to be engaged in the conduct of any business or activity which could result in a Forfeiture Proceeding and no Forfeiture Proceeding against any of them is pending or threatened.

Section 6.19. Solvency.

(a) The present fair saleable value of the assets of the Borrower after giving effect to all the transactions contemplated by the Facility Documents and the funding of all Commitments hereunder exceeds the amount that will be required to be paid on or in respect of the existing debts and other liabilities (including contingent liabilities) of the Borrower and its Subsidiaries as they mature.

(b) The property of the Borrower does not constitute unreasonably small capital for the Borrower to carry out its business as now conducted and as proposed to be conducted including the capital needs of the Borrower.

(c) The Borrower does not intend to, nor does it believe that it will, incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be received by the Borrower, and of amounts to be payable on or in respect of debt of the Borrower). The cash available to the Borrower after taking into account all other anticipated uses of the cash of the Borrower, is anticipated to be sufficient to pay all such amounts on or in respect of debt of the Borrower when such amounts are required to be paid.

(d) The Borrower does not believe that final judgments against it in actions for money damages will be rendered at a time when, or in an amount such that, the Borrower will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum reasonable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered). The cash available to the Borrower after taking into account all other anticipated uses of the cash of the Borrower (including the payments on or in respect of debt referred to in paragraph (c) of this Section 6.19), is anticipated to be sufficient to pay all such judgments promptly in accordance with their terms.

Section 6.20. Cash Available. Borrower and its subsidiaries own cash and cash equivalents (which shall include government bonds, investment grade corporate debt instruments rated A or better, or bank repurchase agreements of 30 days or less duration backed by direct obligations of the United States of America or any agencies thereof) in the aggregate amount of at least \$1,000,000.

#### ARTICLE 7. AFFIRMATIVE COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower shall:

Section 7.01. Maintenance of Existence. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its corporate existence and good standing in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each of its Subsidiaries to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 7.02. Conduct of Business. Continue, and cause each of its Subsidiaries to continue, to engage in an efficient and economical manner in a business of the same general type as conducted by it on the date of this Agreement.

Section 7.03. Maintenance of Properties. Maintain, keep and preserve, and cause each of its Subsidiaries to maintain, keep and preserve, all of its properties, (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 7.04. Maintenance of Records. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all financial transactions of the Borrower and its Subsidiaries.

Section 7.05. Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof.

Section 7.06. Compliance with Laws. Comply, and cause each of its Subsidiaries to comply, in all respects with all applicable laws, rules, regulations and orders (including, but not limited to, environmental laws, rules, regulations, and orders), such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property.

Section 7.07. Right of Inspection. At any reasonable time and from time to time, permit the Agent or any Bank or any agent or representative thereof, to examine and make copies and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any such Subsidiary with any of their respective officers and directors and the Borrower's independent accountants.

Section 7.08. Reporting Requirements. Furnish directly to each of the Banks:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, a consolidated and consolidating balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such fiscal year and a consolidated and consolidating income statement and statements of cash flows and changes in stockholders' equity of the Borrower and its Consolidated Subsidiaries for such fiscal year, all in reasonable detail and stating in comparative form the respective consolidated and consolidating

figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP and as to the consolidated statements accompanied by an opinion thereon acceptable to the Agent and each of the Banks by Price Waterhouse or other independent accountants of national standing selected by the Borrower;

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Borrower, a consolidated and consolidating balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such quarter and a consolidated and consolidating income statement and statements of cash flows and changes in stockholders' equity, of the Borrower and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, all in reasonable detail and stating in comparative form the respective consolidated and consolidating figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP and certified by the chief financial officer of the Borrower (subject to year-end adjustments);

(c) promptly upon receipt thereof, copies of any reports submitted to the Borrower or any of its Subsidiaries by independent certified public accountants in connection with examination of the financial statements of the Borrower or any such Subsidiary made by such accountants;

(d) simultaneously with the delivery of the financial statements referred to above, a certificate of the chief financial officer of the Borrower (i) certifying that to the best of his knowledge no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, and (ii) with computations demonstrating compliance with the covenants contained in Article 9;

(e) simultaneously with the delivery of the annual financial statements referred to in Section 7.08(a), a certificate of the independent public accountants who audited such statements to the effect that, in making the examination necessary for the audit of such statements, they have obtained no knowledge of any condition or event which constitutes a Default or Event of Default, or if such accountants shall have obtained knowledge of any such condition or event, specifying in such certificate each such condition or event of which they have knowledge and the nature and status thereof;

(f) promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Borrower or any of its Subsidiaries which, if determined adversely to the Borrower or such Subsidiary, could have a material adverse effect on the financial condition, properties, or operations of the Borrower or such Subsidiary;

(g) as soon as possible and in any event within 10 days after the occurrence of each Default or Event of Default a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto;

(h) as soon as possible, and in any event within ten days after the Borrower knows or has reason to know that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan have occurred or exist, a statement signed by a senior financial officer of the Borrower setting forth details respecting such event or condition and the action, if any, which the Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Borrower or an ERISA Affiliate with respect to such event or condition):

(i) any reportable event, as defined in Section 4043(b) of ERISA, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum

funding standard of Section 412 of the Code or Section 302 of ERISA including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code) and any request for a waiver under Section 412(d) of the Code for any Plan;

(ii) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by the Borrower or an ERISA Affiliate to terminate any Plan;

(iii) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

(iv) the complete or partial withdrawal from a Multiemployer Plan by the Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt of the Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(v) the institution of a proceeding by a fiduciary or any Multiemployer Plan against the Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days;

(vi) the adoption of an amendment to any Plan that pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA would result in the loss of tax-exempt status of the trust of which such Plan is a part if the Borrower or an ERISA Affiliate fails to timely provide security to the Plan in accordance with the provisions of said Sections;

(vii) any event or circumstance exists which may reasonably be expected to constitute grounds for the Borrower or any ERISA Affiliate to incur liability under Title IV of ERISA or under Sections 412(c)(11) or 412(n) of the Code with respect to any Plan; and

(viii) the Unfunded Benefit Liabilities of one or more Plans increase after the date of this Agreement in an amount which is material in relation to the financial condition of the Borrower and its Subsidiaries, on a consolidated basis; provided, however, that such increase shall not be deemed to be material so long as it does not exceed \$300,000 during any consecutive one year period.

(i) promptly after the request of any Bank, copies of each annual report filed pursuant to Section 104 of ERISA with respect to each Plan (including, to the extent required by Section 104 of ERISA, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information referred to in Section 103) and each annual report filed with respect to each Plan under Section 4065 of ERISA; provided, however, that in the case of a Multiemployer Plan, such annual reports shall be furnished only if they are available to the Borrower or an ERISA Affiliate;

(j) promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Banks pursuant to any other clause of this Section 7.08;

(k) promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which the Borrower or any of its Subsidiaries sends to its stockholders, and copies of all regular, periodic and special reports, and all registration statements which the Borrower or any such Subsidiary files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national

securities exchange;

(l) promptly after the commencement thereof or promptly after the Borrower knows of the commencement or threat thereof, notice of any Forfeiture Proceeding;

(m) a quarterly report from Borrower's environmental counsel on the status of environmental matters relating to Birtcher; and

(n) such other information respecting the condition or operations, financial or otherwise, of the Borrower or any of its Subsidiaries as the Agent or any Bank may from time to time reasonably request.

Section 7.09. Guaranties. Cause any subsidiary hereafter created or acquired to execute and deliver a Guaranty.

#### ARTICLE 8. NEGATIVE COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower shall not:

Section 8.01. Debt. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Debt except:

(a) Debt of the Borrower under this Agreement or the Notes, or under the Credit Agreement—Revolving Credit Facility and Notes issued pursuant thereto;

(b) Debt described in Schedule II, including renewals, extensions or refinancings thereof, provided that the principal amount thereof does not increase;

(c) Debt of the Borrower subordinated on terms satisfactory to the Banks to the Borrower's obligations under this Agreement and the Notes;

(d) Debt of the Borrower to any such Subsidiary or of any Subsidiary to the Borrower or another such Subsidiary;

(e) accounts payable to trade creditors for goods or services which are not aged more than 180 days from billing date and current operating liabilities (other than for borrowed money) which are not more than 180 days past due, in each case incurred in the ordinary course of business and paid within the specified time, unless contested in good faith and by appropriate proceedings;

(f) Debt in respect of letters of credit issued for the account of the Borrower or any such Subsidiary in an aggregate face amount outstanding at any time of up to \$1,500,000;

(g) Debt of the Borrower or any such Subsidiary secured by purchase money Liens permitted by Section 8.03; or

(h) Debt incurred by Borrower in an amount not to exceed \$1,100,000 to finance the purchase and improvement by Borrower of the former Carl's Drug Company real property located at 5836 Success Drive, West Rome Industrial Park, Rome, New York.

Section 8.02. Guaranties, Etc. Assume, guarantee, endorse or otherwise be or become directly or contingently responsible or liable, or permit any of its Subsidiaries to assume, guarantee, endorse or otherwise be or become directly or indirectly responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods or services or to supply or advance any funds, asset, goods or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth or otherwise to assure the creditors of any Person against loss) for the obligations of any Person, except guaranties by endorsement of negotiable



instruments for deposit or collection or similar transactions in the ordinary course of business.

Section 8.03. Liens. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, except:

(a) Liens in favor of the Agent on behalf of the Banks securing the Loans hereunder;

(b) Liens for taxes or assessments or other government charges or levies if not yet due and payable or if due and payable if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(c) Liens imposed by law, such as mechanic's, materialmen's, landlord's, warehousemen's and carrier's Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than 30 days, or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(d) Liens under workmen's compensation, unemployment insurance, social security or similar legislation (other than ERISA);

(e) Liens, deposits or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;

(f) judgment and other similar Liens arising in connection with court proceedings; provided that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(g) easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by the Borrower or any such Subsidiary of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

(h) Liens securing obligations of such a Subsidiary to the Borrower or another such Subsidiary;

(i) Liens described in Schedule II including renewals, extensions or refinancings of the obligations secured thereby, provided that the principal amount does not increase and the Liens are not extended to other property or obligations;

(j) a mortgage granted on the former Carl's Drug Company real property located at 5836 Success Drive, West Rome Industrial Park, Rome, New York to secure the debt referenced in Section 8.01(h); or

(k) purchase money Liens on any property hereafter acquired or the assumption of any Lien on property existing at the time of such acquisition, or a Lien incurred in connection with any conditional sale or other title retention agreement or a Capital Lease; provided that:

(i) any property subject to any of the foregoing is acquired by the Borrower or any such Subsidiary in the ordinary course of its business and the Lien on any such property is created contemporaneously with such acquisition;

(ii) the obligation secured by any Lien so created, assumed or existing shall not exceed 100% of the lesser of cost or fair market value as of the time of acquisition of the property covered thereby to the Borrower or such

Subsidiary acquiring the same;

(iii) each such Lien shall attach only to the property so acquired and fixed improvements thereon;

(iv) the Debt secured by all such Liens shall not exceed \$200,000 at any time outstanding in the aggregate; and

(v) the obligations secured by such Lien are permitted by the provisions of Section 8.01 and the related expenditure is permitted under Section 9.03.

Section 8.04. Leases. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any obligation as lessee for the rental or hire of any real or personal property, except: (a) leases existing on the date of this Agreement and any extensions or renewals thereof; (b) leases (other than Capital Leases) which do not in the aggregate require the Borrower and its Subsidiaries on a consolidated basis to make payments (including taxes, insurance, maintenance and similar expense which the Borrower or any Subsidiary is required to pay under the terms of any lease) in any fiscal year of the Borrower in excess of \$1,000,000; (c) leases between the Borrower and any such Subsidiary or between any such Subsidiaries; and (d) Capital Leases permitted by Section 8.03. Payments under existing Birtcher leases (and renewals of same) for premises located at 50 Technology Drive and 15330 Barranca Parkway, Irvine, California shall be disregarded in calculating Borrower's compliance with the limitations set forth in subsection 8.04(b).

Section 8.05. Loans; Investments. Make, or permit any of its Subsidiaries to make, any loan or advance to any Person, or purchase or otherwise acquire, or permit any such Subsidiary to purchase or otherwise acquire, any capital stock, assets, obligations or other securities of, make any capital contribution to, or otherwise invest in, or acquire any interest in, any Person, except: (a) direct obligations of the United States of America or any agency thereof with maturities of five years or less from the date of acquisition; (b) commercial paper of a domestic issuer rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (c) certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank operating within the United States of America having capital and surplus in excess of \$750,000,000; (d) bank repurchase agreements of 30 days or less duration backed by direct obligations of the United States of America or any agencies thereof; and (e) for stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing to the Borrower or any such Subsidiary.

Section 8.06. Dividends. Without the consent of the Banks, declare or pay any dividends, purchase, redeem, retire or otherwise acquire for value any of its capital stock now or hereafter outstanding, or make any distribution of assets to its stockholders as such whether in cash, assets or in obligations of the Borrower, or allocate or otherwise set apart any sum for the payment of any dividend or distribution on, or for the purchase, redemption or retirement of any shares of its capital stock, or make any other distribution by reduction of capital or otherwise in respect of any shares of its capital stock or permit any of its Subsidiaries to purchase or otherwise acquire for value any stock of the Borrower or another such Subsidiary, except that: (a) the Borrower may declare and deliver dividends and make distributions payable solely in common stock of the Borrower; and (b) the Borrower may purchase or otherwise acquire shares of its capital stock by exchange for or out of the proceeds received from a substantially concurrent issue of new shares of its capital stock.

Section 8.07. Sale of Assets. Sell, lease, assign, transfer or otherwise dispose of, or permit any of its Subsidiaries to sell, lease, assign, transfer or otherwise dispose of, any of its now owned or hereafter acquired assets (including, without limitation, shares of stock and indebtedness of such Subsidiaries, receivables and leasehold interests); except: (a) for inventory disposed of in the ordinary course of business; (b) the sale or other disposition of assets no longer used or useful in the conduct of its business;

(c) that any such Subsidiary may sell, lease, assign, or otherwise transfer its assets to the Borrower; and (d) Borrower may sell, lease, assign or otherwise transfer assets to any Subsidiary so long as a Guaranty is in full force and effect for such Subsidiary.

Section 8.08. Stock of Subsidiaries, Etc. Sell or otherwise dispose of any shares of capital stock of any of its Subsidiaries, except in connection with a transaction permitted under Section 8.10, or permit any such Subsidiary to issue any additional shares of its capital stock, except directors' qualifying shares.

Section 8.09. Transactions with Affiliates. Enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate or permit any of its Subsidiaries to enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 8.10. Mergers, Etc. Merge or consolidate with, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person, or acquire all or substantially all of the assets or the business of any Person (or enter into any agreement to do any of the foregoing), or permit any of its Subsidiaries to do so except that: (a) any such Subsidiary may merge into or transfer assets to the Borrower; and (b) any Subsidiary may merge into or consolidate with or transfer assets to any other Subsidiary.

Section 8.11. Acquisitions. Enter into any transaction (other than the Birtcher Acquisition and the Target Acquisition) pursuant to which the Borrower or any of its Subsidiaries (a) acquires equity securities (or warrants, options or other rights to acquire such securities) of any corporation other than the Borrower or any corporation which is not then a Subsidiary of the Borrower, pursuant to a solicitation of tenders therefor, or in one or more negotiated block, market or other transactions not involving a tender offer, or a combination of any of the foregoing, or (b) makes any corporation a Subsidiary of the Borrower, or causes any such corporation to be merged into the Borrower or any of its Subsidiaries, in any case pursuant to a merger, purchase of assets or any reorganization providing for the delivery or issuance to the holders of such corporation's then outstanding securities, in exchange for such securities, of cash or securities of the Borrower or any of its Subsidiaries, or a combination thereof, or (c) purchases all or substantially all of the business or assets of any corporation.

Section 8.12. No Activities Leading to Forfeiture. Neither the Borrower nor any of its Subsidiaries or Affiliates shall engage in or propose to be engaged in the conduct of any business or activity which could result in a Forfeiture Proceeding.

Section 8.13. New Businesses. Engage in, or permit any Subsidiary to engage in, any business other than those presently conducted.

#### ARTICLE 9. FINANCIAL COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement:

Section 9.01. Minimum Working Capital. The Borrower shall maintain at all times an excess of Consolidated Current Assets over Consolidated Current Liabilities of not less than the amounts listed on the following table for the periods stated therein. For purposes of Sections 9.01 and 9.04 only, Loans under the Credit Agreement-Revolving Credit Facility shall not be considered as Current Liabilities.

	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998	Fiscal Year 1999	Fiscal Year 2000
1st Quarter	\$15,000M	\$21,000M	\$28,000M	\$40,000M	\$40,000M	\$40,000M
2nd Quarter	15,000M	22,000M	31,000M	40,000M	40,000M	-
3rd Quarter	15,000M	23,000M	34,000M	40,000M	40,000M	-
4th Quarter	20,000M	25,000M	37,000M	40,000M	40,000M	-

Section 9.02. Minimum Tangible Net Worth. The Borrower shall maintain at all times a Consolidated Tangible Net Worth of not less than the amounts listed on the following table for the periods stated therein.

	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998	Fiscal Year 1999	Fiscal Year 2000
1st Quarter	\$5,000M	\$21,000M	\$35,000M	\$45,000M	\$45,000M	\$45,000M
2nd Quarter	5,000M	24,000M	38,000M	45,000M	45,000M	-
3rd Quarter	7,000M	27,000M	41,000M	45,000M	45,000M	-
4th Quarter	18,000M	31,000M	45,000M	45,000M	45,000M	-

Section 9.03. Leverage Ratio. The Borrower shall maintain at all times a ratio of Consolidated Total Liabilities to Consolidated Tangible Net Worth of not greater than the amounts listed on the following table for the periods stated therein.

	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998	Fiscal Year 1999	Fiscal Year 2000
1st Quarter	6.00:1.00	2.00:1.00	1.05:1.00	0.95:1.00	0.95:1.00	0.95:1.00
2nd Quarter	6.00:1.00	1.70:1.00	0.95:1.00	0.95:1.00	0.95:1.00	-
3rd Quarter	4.00:1.00	1.40:1.00	0.95:1.00	0.95:1.00	0.95:1.00	-
4th Quarter	2.40:1.00	1.25:1.00	0.95:1.00	0.95:1.00	0.95:1.00	-

Section 9.04. Cash Flow Coverage Ratio. The Borrower shall maintain at all times a Cash Flow Coverage Ratio of not less than 1.15:1.00 through June 30, 1995 and 1.25:1.0 thereafter.

Section 9.05. Limitation on Debt. The Borrower shall maintain at all times a ratio of Total Funded Debt to Cash Flow of not more than 4.5:1.0.

#### ARTICLE 10. EVENTS OF DEFAULT.

Section 10.01. Events of Default. Any of the following events shall be an "Event of Default":

(a) the Borrower shall: (i) fail to pay the principal of any Note under this Agreement or with respect to the Revolving Credit Facility Loans as and when due and payable; or (ii) fail to pay interest on any Note under this Agreement or with respect to the Revolving Credit Facility Loans or any fee or other amount due hereunder as and when due and payable;

(b) any representation or warranty made or deemed made by the Borrower in this Agreement or in any other Facility Document or by any Third Party in any Facility Document to which it is a party or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with any Facility Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made;

(c) the Borrower shall: (i) fail to perform or observe any

term, covenant or agreement contained in Section 2.03 or Articles 7, 8 or 9 or elsewhere in this Agreement; or (ii) fail to perform or observe any term, covenant or agreement on its part to be performed or observed (other than the obligations specifically referred to elsewhere in this Section 10.01) in any Facility Document and such failure shall continue for 30 consecutive days;

(d) the Borrower, any Third Party or any of their respective Subsidiaries shall: (i) fail to pay any indebtedness, including but not limited to indebtedness for borrowed money (other than the payment obligations described in (a) above), of the Borrower, such Third Party or such Subsidiary, as the case may be, or any interest or premium thereon, within 180 days of billing date in the case of trade accounts payable, 180 days from the due date in the case of other operating liabilities (other than for borrowed money), and within thirty days of the date when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) for all other Debt; or (ii) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or passage of time, or both, the maturity of such indebtedness, whether or not such failure to perform or observe shall be waived by the holder of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(e) the Borrower, any Third Party or any of their respective Subsidiaries: (i) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding shall have been commenced, against it, in which an adjudication or appointment is made or order for relief is entered, and which petition, application or proceeding remains undismissed for a period of 30 days or more; or shall be the subject of any proceeding under which its assets may be subject to seizure, forfeiture or divestiture (other than a proceeding in respect of a Lien permitted under Section 8.03 (b)); or (v) by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of 30 days or more;

(f) one or more judgments, decrees or orders for the payment of money in excess of \$100,000 in the aggregate shall be rendered against the Borrower, any Third Party or any of their respective Subsidiaries and such judgments, decrees or orders shall continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal;

(g) any event or condition shall occur or exist with respect to any Plan or Multiemployer Plan concerning which the Borrower is under an obligation to furnish a report to the Bank in accordance with Section 7.08(h) hereof and as a result of such event or condition, together with all other such events or conditions, the Borrower or any ERISA Affiliate has incurred or in the opinion of the Bank is reasonably likely to incur a liability to a Plan, a Multiemployer Plan, the PBGC, or a Section 4042 Trustee (or any combination of the foregoing) which is material in relation to the financial position of the Borrower and its Subsidiaries, on a consolidated basis; provided, however, that any such amount shall not be deemed to be material so long as all such amounts do not exceed in the aggregate during any consecutive one year period \$500,000;

(h) The Unfunded Benefit Liabilities of one or more Plans have increased after the date of this Agreement in an amount which is material (as specified in Section 10.01(g) hereof);

(i) (i) any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rules 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 5% or more of the outstanding shares of voting stock of the Borrower unless such persons are qualified to file SEC Schedule 12G under SEC Rules 13d-1(b)(1) and 13d-2(b); or (ii) during any period of 12 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 12-month period were directors of the Borrower cease for any reason to constitute a majority of the board of directors of the Borrower unless such persons are replaced as directors by persons nominated by the then current board of directors;

(j) (A) any Forfeiture Proceeding shall have been commenced or the Borrower shall have given any Bank written notice of the commencement of any Forfeiture Proceeding as provided in Section 7.08(1) or (B) any Bank has a good faith basis to believe that a Forfeiture Proceeding has been threatened or commenced;

(k) any Guaranty shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Guarantor, or the Guarantor shall revoke or terminate its Guaranty with respect to future advances, deny it has any further liability or obligation thereunder, or shall fail to perform its obligations thereunder; or

(l) any loss contingency for costs and expenses relating to environmental remediation becomes accruable as a liability on the financial statements of Borrower under Financial Accounting Standards Board Standard No. 5, and such liability exceeds either \$5,000,000 in the aggregate, regardless of when due and payable, or \$750,000 if payable within one year.

Section 10.02. Remedies. If any Event of Default shall occur and be continuing, the Agent shall, upon request of the Required Banks, by notice to the Borrower, (a) declare the Commitments to be terminated, whereupon the same shall forthwith terminate, and (b) declare the outstanding principal of the Notes, all interest thereon and all other amounts payable under this Agreement and the Notes to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided that, in the case of an Event of Default referred to in Section 10.01(e) or Section 10.01(j)(A) above, the Commitments shall be immediately terminated, and the Notes, all interest thereon and all other amounts payable under this Agreement shall be immediately due and payable without notice, presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower.

#### ARTICLE 11. THE AGENT; RELATIONS AMONG BANKS AND BORROWER.

Section 11.01. Appointment, Powers and Immunities of Agent. Each Bank hereby irrevocably (but subject to removal by the Required Banks pursuant to Section 11.09) appoints and authorizes the Agent to act as its agent hereunder and under any other Facility Document with such powers as are specifically delegated to the Agent by the terms of this Agreement and any other Facility Document, together with such other powers as are reasonably incidental thereto. The Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Facility Document, and shall not by reason of this Agreement be a trustee for any Bank. The Agent shall not be responsible to the Banks for any recitals, statements, representations or warranties made by the Borrower or any officer or official of the Borrower or any other Person contained in this Agreement or any other Facility Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Facility Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Facility Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any collateral security for the Loans

or for any failure by the Borrower to perform any of its obligations hereunder or thereunder. The Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither the Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Facility Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. The Borrower shall pay any fee agreed to by the Borrower and the Agent with respect to the Agent's services hereunder.

Section 11.02. Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Agent. The Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof unless and until a notice of the assignment or transfer thereof satisfactory to the Agent signed by such Bank shall have been furnished to the Agent but the Agent shall not be required to deal with any Person who has acquired a participation in any Loan from a Bank. As to any matters not expressly provided for by this Agreement or any other Facility Document, the Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Banks, and such instructions of the Required Banks and any action taken or failure to act pursuant thereto shall be binding on all of the Banks and any other holder of all or any portion of any Loan.

Section 11.03. Defaults. The Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default (other than the non-payment of principal of or interest on the Loans to the extent the same is required to be paid to the Agent for the account of the Banks) unless the Agent has received notice from a Bank or the Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that the Agent receives such a notice of the occurrence of a Default or Event of Default, the Agent shall give prompt notice thereof to the Banks (and shall give each Bank prompt notice of each such non-payment). The Agent shall (subject to Section 11.08) take such action with respect to such Default or Event of Default which is continuing as shall be directed by the Required Banks; provided that, unless and until the Agent shall have received such directions, the Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Banks; and provided further that the Agent shall not be required to take any such action which it determines to be contrary to law.

Section 11.04. Rights of Agent as a Bank. With respect to its Commitment and the Loan made by it, the Agent in its capacity as a Bank hereunder shall have the same rights and powers hereunder as any other Bank and may exercise the same as though it were not acting as the Agent, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include the Agent in its capacity as a Bank. The Agent and its affiliates may (without having to account therefor to any Bank) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with, the Borrower (and any of its affiliates) as if it were not acting as the Agent, and the Agent may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Banks. Although the Agent and its affiliates may in the course of such relationships and relationships with other Persons acquire information about the Borrower, its Affiliates and such other Persons, the Agent shall have no duty to disclose such information to the Banks.

Section 11.05. Indemnification of Agent. The Banks agree to indemnify the Agent (to the extent not reimbursed under Section 12.03 or under the applicable provisions of any other Facility Document, but without limiting the obligations of the Borrower under Section 12.03 or such provisions), ratably

in accordance with the aggregate unpaid principal amount of the Loans made by the Banks (without giving effect to any participations, in all or any portion of such Loans, sold by them to any other Person) (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement, any other Facility Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which the Borrower is obligated to pay under Section 12.03 or under the applicable provisions of any other Facility Document but excluding, unless a Default or Event of Default has occurred, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified.

Section 11.06. Documents. The Agent will forward to each Bank, promptly after the Agent's receipt thereof, a copy of each report, notice or other document required by this Agreement or any other Facility Document to be delivered to the Agent for such Bank.

Section 11.07. Non-Reliance on Agent and Other Banks. Each Bank agrees that it has, independently and without reliance on the Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and its Subsidiaries and decision to enter into this Agreement and that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Facility Document. The Agent shall not be required to keep itself informed as to the performance or observance by the Borrower of this Agreement or any other Facility Document or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or any Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of the Borrower or any Subsidiary (or any of their Affiliates) which may come into the possession of the Agent or any of its affiliates. The Agent shall not be required to file this Agreement, any other Facility Document or any document or instrument referred to herein or therein, for record or give notice of this Agreement, any other Facility Document or any document or instrument referred to herein or therein, to anyone.

Section 11.08. Failure of Agent to Act. Except for action expressly required of the Agent hereunder, the Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of the Banks under Section 11.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

Section 11.09. Resignation or Removal of Agent. Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by giving written notice thereof to the Banks and the Borrower, and the Agent may be removed at any time with or without cause by the Required Banks; provided that the Borrower and the other Banks shall be promptly notified thereof. Upon any such resignation or removal, the Required Banks shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Banks and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation or the Required Banks' removal of the retiring Agent, then the retiring Agent may, on behalf of the Banks, appoint a successor Agent, which shall be a bank which has an office in New York, New York. The Required Banks or the retiring Agent, as the case may be, shall upon the appointment of a successor Agent promptly so



notify the Borrower and the other Banks. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article 11 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent.

Section 11.10. Amendments Concerning Agency Function. The Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Facility Document which affects its duties hereunder or thereunder unless it shall have given its prior consent thereto.

Section 11.11. Liability of Agent. The Agent shall not have any liabilities or responsibilities to the Borrower on account of the failure of any Bank to perform its obligations hereunder or to any Bank on account of the failure of the Borrower to perform its obligations hereunder or under any other Facility Document.

Section 11.12. Transfer of Agency Function. Without the consent of the Borrower or any Bank, the Agent may at any time or from time to time transfer its functions as Agent hereunder to any of its offices wherever located, provided that the Agent shall promptly notify the Borrower and the Banks thereof.

Section 11.13. Non-Receipt of Funds by the Agent. Unless the Agent shall have been notified by a Bank or the Borrower (either one as appropriate being the "Payor") prior to the date on which such Bank is to make payment hereunder to the Agent of the proceeds of a Loan or the Borrower is to make payment to the Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor does not intend to make the Required Payment to the Agent, the Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient on such date and, if the Payor has not in fact made the Required Payment to the Agent, the recipient of such payment shall, on demand, repay to the Agent the amount made available to it together with interest thereon for the period from the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to the average daily Federal Funds Rate for such period.

Section 11.14. Withholding Taxes. Each Bank represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to the Agent such forms, certifications, statements and other documents as the Agent may request from time to time to evidence such Bank's exemption from the withholding of any tax imposed by any jurisdiction or to enable the Agent to comply with any applicable laws or regulations relating thereto. Without limiting the effect of the foregoing, if any Bank is not created or organized under the laws of the United States of America or any state thereof, in the event that the payment of interest by the Borrower is treated for U.S. income tax purposes as derived in whole or in part from sources from within the U.S., such Bank will furnish to the Agent Form 4224 or Form 1001 of the Internal Revenue Service, or such other forms, certifications, statements or documents, duly executed and completed by such Bank as evidence of such Bank's exemption from the withholding of U.S. tax with respect thereto. The Agent shall not be obligated to make any payments hereunder to such Bank in respect of any Loan or such Bank's Commitment until such Bank shall have furnished to the Agent the requested form, certification, statement or document.

Section 11.15. Several Obligations and Rights of Banks. The failure of any Bank to make any Loan to be made by it on the date specified therefor shall not relieve any other Bank of its obligation to make its Loan on such date, but no Bank shall be responsible for the failure of any other Bank to make a Loan to be made by such other Bank. The amounts payable at any time hereunder to each Bank shall be a separate and independent debt, and each Bank shall be entitled to protect and enforce its rights arising out of this

Agreement, and it shall not be necessary for any other Bank to be joined as an additional party in any proceeding for such purpose.

Section 11.16. Pro Rata Treatment of Loans, Etc. Except to the extent otherwise provided: (a) each borrowing under Section 2.04 shall be made from the Banks, pro rata according to the amounts of their respective Commitments; (b) each conversion under Section 2.05 of Loans of a particular type (but not conversions provided for by Section 3.04), shall be made pro rata among the Banks holding Loans of such type according to the respective principal amounts of such Loans by such Banks; and (c) each pre-payment and payment of principal of or interest on Loans of a particular type and a particular Interest Period shall be made to the Agent for the account of the Banks holding Loans of such type and Interest Period pro rata in accordance with the respective unpaid principal amounts of such Loans of such Interest Period held by such Banks.

Section 11.17. Sharing of Payments Among Banks. If a Bank shall obtain payment of any principal of or interest on any Loan made by it through the exercise of any right of setoff, banker's lien, counterclaim, or by any other means (including any payment obtained from or charged against any Third Party), it shall promptly purchase from the other Banks participations in (or, if and to the extent specified by such Bank, direct interests in) the Loans made by the other Banks in such amounts, and make such other adjustments from time to time as shall be equitable to the end that all the Banks shall share the benefit of such payment (net of any expenses which may be incurred by such Bank in obtaining or preserving such benefit) pro rata in accordance with the unpaid principal and interest on the Loans, on the Revolving Credit Loans and on other Debt to any of the Banks permitted under Section 8.01(b), held by each of them prior to such action. To such end the Banks shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Bank so purchasing a participation (or direct interest) in the Loans made by other Banks may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation (or direct interest). Nothing contained herein shall require any Bank to exercise any such right or shall affect the right of any Bank to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness of the Borrower.

#### ARTICLE 12. MISCELLANEOUS.

Section 12.01. Amendments and Waivers. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended or modified only by an instrument in writing signed by the Borrower, the Agent and the Required Banks, or by the Borrower and the Agent acting with the consent of the Required Banks and any provision of this Agreement may be waived by the Required Banks or by the Agent acting with the consent of the Required Banks; provided that no amendment, modification or waiver shall, unless by an instrument signed by all of the Banks or by the Agent acting with the consent of all of the Banks: (a) increase or extend the term, or extend the time or waive any requirement for the reduction or termination, of the Commitments, (b) extend the date fixed for the payment of principal, interest or fees on any Loan, (c) reduce the amount of any payment of principal thereof or the rate at which interest is payable thereon or any fee payable hereunder, (d) alter the terms of this Section 12.01, (e) amend the definition of the term "Required Banks" or (f) waive any of the conditions precedent set forth in Article 5 hereof and provided, further, that any amendment of Article 11 hereof or any amendment which increases the obligations of the Agent hereunder shall require the consent of the Agent. No failure on the part of the Agent or any Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 12.02. Usury. Anything herein to the contrary notwithstanding, the obligations of the Borrower under this Agreement and the Notes shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of law applicable to a Bank limiting rates of interest which may be charged or

collected by such Bank.

Section 12.03. Expenses. The Borrower shall reimburse the Agent and the Banks on demand for all costs, expenses, and charges (including, without limitation, fees and charges of external legal counsel for the Agent and each Bank and costs allocated by their respective internal legal departments) incurred by the Agent or the Banks in connection with the preparation, performance, or enforcement of this Agreement or the Notes. The Borrower agrees to indemnify the Agent and each Bank and their respective directors, officers, employees and agents from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by the Borrower or any Subsidiary of the proceeds of the Loans, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the negligence or willful misconduct of the Person to be indemnified).

Section 12.04. Survival. The obligations of the Borrower under Sections 3.01, 3.05 and 12.03 shall survive the repayment of the Loans and the termination of the Commitments.

Section 12.05. Assignment; Participations. (a) This Agreement shall be binding upon, and shall inure to the benefit of, the Borrower, the Agent, the Banks and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder. Each Bank may assign, or sell participations in, all or any part of the Loan to another bank or other entity, in which event (i) in the case of an assignment, upon notice thereof by the Bank to the Borrower with a copy to the Agent, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it were a Bank hereunder; and (ii) in the case of a participation, the participant shall have no rights under the Facility Documents and all amounts payable by the Borrower under Article 3 shall be determined as if such Bank had not sold such participation. The agreement executed by such Bank in favor of the participant shall not give the participant the right to require such Bank to take or omit to take any action hereunder except action directly relating to (i) the extension of a payment date with respect to any portion of the principal, interest or fees on any amount outstanding hereunder allocated to such participant, (ii) the reduction of the principal amount outstanding hereunder, (iii) the reduction of the rate of interest payable on such amount or any amount of fees payable hereunder to a rate or amount, as the case may be, below that which the participant is entitled to receive under its agreement with such Bank, or (iv) the extension of the Final Maturity Date. Such Bank may furnish any information concerning the Borrower in the possession of such Bank from time to time to assignees and participants (including prospective assignees and participants); provided that such Bank shall require any such prospective assignee or such participant (prospective or otherwise) to agree in writing to maintain the confidentiality of such information. In connection with any assignment pursuant to this paragraph (a), the assigning Bank shall pay the Agent an administrative fee for processing such assignment in the amount of \$2,500.

(b) In addition to the assignments and participations permitted under paragraph (a) above, any Bank may assign and pledge all or any portion of its Loans and Note to (i) any affiliate of such Bank or (ii) any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank. No such assignment shall release the assigning Bank from its obligations hereunder.

Section 12.06. Notices. Except as otherwise provided in this Agreement, notices may be given by telecopy, overnight courier, or by regular mail, telecopied or addressed to the intended recipient at its telecopy number or address listed on the signature page of this Agreement. Notices shall be effective: (a) if given by mail, 72 hours after deposit in the mails with first class postage prepaid, addressed as aforesaid; (b) if given by telecopy, when

the telecopy is transmitted to the applicable telecopy number; and (c) if sent by overnight courier, upon delivery; provided, however, that notices to the Agent and the Banks shall be effective upon receipt. A party may change its telecopy number or address for receipt of notices by written notice given in accordance with this paragraph.

Section 12.07. JURISDICTION; IMMUNITIES; WAIVER OF RIGHT TO JURY TRIAL. (a) THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE OR UNITED STATES FEDERAL COURT SITTING IN ONONDAGA OR ONEIDA COUNTY OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, OR ANY OTHER FACILITY DOCUMENT, AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO THE BORROWER AT ITS ADDRESS SPECIFIED IN SECTION 12.07 BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. THE BORROWER FURTHER WAIVES ANY OBJECTION TO VENUE IN SUCH STATE AND ANY OBJECTION TO AN ACTION OR PROCEEDING IN SUCH STATE ON THE BASIS OF FORUM NON CONVENIENS. THE BORROWER AND THE BANKS FURTHER AGREE THAT ANY ACTION OR PROCEEDING BROUGHT AGAINST THE AGENT SHALL BE BROUGHT ONLY IN NEW YORK STATE OR UNITED STATES FEDERAL COURT SITTING IN ONONDAGA COUNTY. THE BORROWER WAIVES ANY RIGHT IT MAY HAVE TO JURY TRIAL.

(b) Nothing in this Section 12.07 shall affect the right of the Agent or any Bank to serve legal process in any other manner permitted by law or affect the right of the Agent or any Bank to bring any action or proceeding against the Borrower or its property in the courts of any other jurisdictions.

(c) To the extent that the Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, the Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the Notes.

Section 12.08. Table of Contents; Headings. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 12.09. Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 12.10. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 12.11. Integration. The Facility Documents set forth the entire agreement among the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 12.12. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 12.13. Confidentiality. Each Bank and the Agent agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in

accordance with safe and sound banking practices, any nonpublic information supplied to it by the Borrower pursuant to this Agreement which is identified by the Borrower as being confidential at the time the same is delivered to the Banks or the Agent, provided that nothing herein shall limit the disclosure of any such information (i) to the extent required by statute, rule, regulation or judicial process, (ii) to counsel for any of the Banks or the Agent, (iii) to bank examiners, auditors or accountants, (iv) in connection with any litigation to which any one or more of the Banks is a party or (v) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first executes and delivers to the respective Bank a Confidentiality Agreement in substantially the form of Exhibit C hereto; provided, further, that, unless specifically prohibited by applicable law or court order, each Bank shall, prior to disclosure thereof, notify the Borrower of any request for disclosure of any such non-public information (x) by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Bank by such governmental agency) or (y) pursuant to legal process; and provided finally that in no event shall any Bank or the Agent be obligated or required to return any materials furnished by the Borrower. The obligations of each Bank under this Section 12.13 shall supersede and replace the obligations of such Bank under the confidentiality letter in respect of this financing signed and delivered by such Bank to the Borrower prior to the date hereof.

Section 12.14. Treatment of Certain Information. The Borrower (a) acknowledges that services may be offered or provided to it (in connection with this Agreement or otherwise) by each Bank or by one or more of their respective subsidiaries or affiliates and (b) acknowledges that any information delivered to each Bank or to its subsidiaries or affiliates regarding the Borrower may be shared among the Bank and such subsidiaries and affiliates. This Section 12.14 shall survive the repayment of the loans and the termination of the Commitments.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CONMED CORPORATION

By: \_\_\_\_\_  
Name: Joseph J. Corasanti  
Title: Vice President

Address for Notices:

CONMED CORPORATION 310 Broad Street  
Utica, New York 13501 Attn:  
Eugene R. Corasanti, President  
Telecopy: (315) 797-0321

AGENT:

THE CHASE MANHATTAN BANK  
(NATIONAL ASSOCIATION)

By: \_\_\_\_\_  
Name: Frederick K. Miller  
Title: Vice President

Address for Notices:

THE CHASE MANHATTAN BANK, N.A.  
P.O. Box 4911  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Frederick K. Miller  
Telecopy: (315) 424-2933

BANKS:

THE CHASE MANHATTAN BANK  
(NATIONAL ASSOCIATION)

By: \_\_\_\_\_  
Name: Frederick K. Miller  
Title: Vice President

Lending Office and Address for  
Notices:  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Frederick K. Miller  
Telecopy: (315) 424-2933

FLEET BANK

By: \_\_\_\_\_  
Name: Bruce W. Goodnough  
Title: Vice President

Lending Office and Address for  
Notices:  
268 Genesee Street  
Utica, New York 13502  
Attn: Bruce W. Goodnough  
Telecopy: (315) 798-2736

CREDIT AGREEMENT - REVOLVING CREDIT FACILITY

dated as of March 8, 1995

among

CONMED CORPORATION

the Banks signatory hereto

and

THE CHASE MANHATTAN BANK, N.A.

as Agent

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS; ACCOUNTING TERMS
Section 1.01	Definitions
Section 1.02	Accounting Terms
ARTICLE 2	THE CREDIT
Section 2.01	The Loans
Section 2.02	The Notes
Section 2.03	Purpose
Section 2.04	Borrowing Procedures
Section 2.05	Prepayments and Conversions
Section 2.06	Mandatory Prepayments
Section 2.07	Fixed Rate Loans-Interest Periods; Renewals
Section 2.08	Changes of Commitment
Section 2.09	Certain Notices
Section 2.10	Minimum Amounts
Section 2.11	Interest
Section 2.12	Fees
Section 2.13	Payments Generally
Section 2.14	Late Payment Fees
ARTICLE 3	YIELD PROTECTION; ILLEGALITY; ETC.
Section 3.01	Additional Costs
Section 3.02	Limitation on Types of Loans
Section 3.03	Illegality
Section 3.04	Certain Conversions
Section 3.05	Certain Compensation
Section 3.06	HLT Classification
ARTICLE 4	COLLATERAL SECURITY
Section 4.01	Collateral
Section 4.02	Setoff
Section 4.03	Guaranties
ARTICLE 5	CONDITIONS PRECEDENT
Section 5.01	Documentary Conditions Precedent
Section 5.02	Additional Conditions Precedent
Section 5.03	Term Loan Borrowings
Section 5.04	Deemed Representations
ARTICLE 6	REPRESENTATIONS AND WARRANTIES

Section 6.01	Incorporation, Good Standing and Due Qualification
Section 6.02	Corporate Power and Authority; No Conflicts
Section 6.03	Legally Enforceable Agreements
Section 6.04	Litigation
Section 6.05	Financial Statements
Section 6.06	Ownership and Liens
Section 6.07	Taxes
Section 6.08	ERISA
Section 6.09	Subsidiaries and Ownership of Stock
Section 6.10	Credit Arrangements
Section 6.11	Operation of Business
Section 6.12	Hazardous Materials
Section 6.13	No Default on Outstanding Judgments or Orders
Section 6.14	No Defaults on Other Agreements
Section 6.15	Labor Disputes and Acts of God
Section 6.16	Governmental Regulation
Section 6.17	Partnerships
Section 6.18	No Forfeiture
Section 6.19	Solvency
Section 6.20	Cash Available

#### ARTICLE 7 AFFIRMATIVE COVENANTS

Section 7.01	Maintenance of Existence
Section 7.02	Conduct of Business
Section 7.03	Maintenance of Properties
Section 7.04	Maintenance of Records
Section 7.05	Maintenance of Insurance
Section 7.06	Compliance with Laws
Section 7.07	Right of Inspection
Section 7.08	Reporting Requirements
Section 7.09	Cash Available

#### ARTICLE 8 NEGATIVE COVENANTS

Section 8.01	Debt
Section 8.02	Guaranties, Etc.
Section 8.03	Liens
Section 8.04	Leases
Section 8.05	Investments
Section 8.06	Dividends
Section 8.07	Sale of Assets
Section 8.08	Stock of Subsidiaries, Etc.
Section 8.09	Transactions with Affiliates
Section 8.10	Mergers, Etc.
Section 8.11	Acquisitions
Section 8.12	No Activities Leading to Forfeiture

#### ARTICLE 9 FINANCIAL COVENANTS

Section 9.01	Minimum Working Capital
Section 9.02	Minimum Tangible Net Worth
Section 9.03	Leverage Ratio
Section 9.04	Cash Flow Coverage Ratio
Section 9.05	Limitation on Debt

#### ARTICLE 10 EVENTS OF DEFAULT

Section 10.01	Events of Default
Section 10.02	Remedies



ARTICLE 11 THE AGENT; RELATIONS AMONG BANKS AND BORROWER

Section 11.01	Appointment, Powers and Immunities of Agent
Section 11.02	Reliance by Agent
Section 11.03	Defaults
Section 11.04	Rights of Agent as a Bank
Section 11.05	Indemnification of Agent
Section 11.06	Documents
Section 11.07	Non-Reliance on Agent and Other Banks
Section 11.08	Failure of Agent to Act
Section 11.09	Resignation or Removal of Agent
Section 11.10	Amendments Concerning Agency Function
Section 11.11	Liability of Agent
Section 11.12	Transfer of Agency Function
Section 11.13	Non-Receipt of Funds by the Agent
Section 11.14	Withholding Taxes
Section 11.15	Several Obligations and Rights of Banks
Section 11.16	Pro Rata Treatment of Loans, Etc
Section 11.17	Sharing of Payments Among Banks

ARTICLE 12 MISCELLANEOUS

Section 12.01	Amendments and Waivers
Section 12.02	Usury
Section 12.03	Expenses
Section 12.04	Survival
Section 12.05	Assignment; Participations
Section 12.06	Notices
Section 12.07	Jurisdiction; Immunities
Section 12.08	Table of Contents; Headings
Section 12.09	Severability
Section 12.10	Counterparts
Section 12.11	Integration
Section 12.12	Governing Law
Section 12.13	Confidentiality
Section 12.14	Treatment of Certain Information

EXHIBITS

Exhibit A	Promissory Note
Exhibit B	Authorization Letter
Exhibit C	Guaranty
Exhibit D	Security Agreement
Exhibit E	Opinion of Counsel for Borrower
Exhibit F	Opinion of Counsel for Each Third Party
Exhibit G	Confidentiality Agreement
Exhibit H	Plan Funding Status
Exhibit I	Borrowing Notice

SCHEDULES

Schedule I	Subsidiaries of Borrower
Schedule II	Credit Arrangements
Schedule III	Hazardous Materials

CREDIT

AGREEMENT dated as of March 8, 1995 among CONMED CORPORATION, a corporation organized under the laws of the State of New York (the "Borrower"), each of the banks which is a signatory hereto (individually a "Bank" and collectively the "Banks") and THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), a national banking association organized under the laws of the United States of America, as agent for the Banks (in such capacity, together with its successors in such capacity, the "Agent").

The Borrower desires that the Banks extend credit as provided herein

and the Banks are prepared to extend such credit. Accordingly, the Borrower, the Banks and the Agent agree as follows:

ARTICLE 1. DEFINITIONS; ACCOUNTING TERMS.

Section 1.01. Definitions. As used in this Agreement the following terms have the following meanings (terms defined in the singular to have a correlative meaning when used in the plural and vice versa):

"Account" means any right to payment for goods sold or leased or for services rendered, which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance, whether secured or unsecured, now existing or hereafter arising, and the proceeds thereof.

"Acquisitions" means the Birtcher Acquisition and the Target Acquisition. "Affiliate" means any Person: (a) which directly or indirectly controls, or is controlled by, or is under common control with, the Borrower or any of its Subsidiaries; (b) which directly or indirectly beneficially owns or holds 15% or more of any class of voting stock of the Borrower or any such Subsidiary; (c) 15% or more of the voting stock of which is directly or indirectly beneficially owned or held by the Borrower or such Subsidiary; or (d) which is a partnership in which the Borrower or any of its Subsidiaries is a general partner. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agent's Office" means the principal office of Agent in Syracuse, New York, presently located at One Lincoln Center, Syracuse, New York 13202.

"Agreement" means this Credit Agreement, as amended or supplemented from time to time. References to Articles, Sections, Exhibits, Schedules and the like refer to the Articles, Sections, Exhibits, Schedules and the like of this Agreement unless otherwise indicated.

"Authorization Letter" means the letter agreement executed by the Borrower in the form of Exhibit B.

"Banking Day" means any day on which commercial banks are not authorized or required to close in New York City and whenever such day relates to a Eurodollar Loan or notice with respect to any Eurodollar Loan, a day on which dealings in Dollar deposits are also carried out in the London interbank market.

"Birtcher Acquisition" means the merger of CONMED Acquisition Corporation, a wholly-owned subsidiary of Borrower, with and into Birtcher Medical Systems, Inc., with Birtcher becoming a wholly-owned subsidiary of Borrower, pursuant to the Plan and Agreement of Merger.

"Capital Expenditures" means for any period, the Dollar amount of gross expenditures (including obligations under Capital Leases) made for fixed assets, real property, plant and equipment, and all renewals, improvements and replacements thereto (but not repairs thereof) incurred during such period. Assets acquired in the Acquisitions shall not be considered "Capital Expenditures" for purposes of this Agreement.

"Capital Lease" means any lease which has been capitalized on the books of the lessee in accordance with GAAP.

"Cash Flow" (as distinguished from Measured Cash Flow) means the sum of the following measured on a consolidated basis for Borrower and any subsidiaries, for any twelve month period ending on the last day of Borrower's fiscal quarters: (i) earnings before interest, taxes, depreciation, and amortization, minus (ii) Capital Expenditures.

"Cash Flow Coverage Ratio" means the ratio of Measured Cash Flow to Current Debt Service, measured on a consolidated basis for Borrower and its

Subsidiaries for any twelve month period ending on the last day of each of Borrower's fiscal quarters.

"Chase" means The Chase Manhattan Bank, N.A.

"Closing Date" means the date this Agreement has been executed by the Borrower, the Banks and the Agent.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all personal property of Borrower and of the Guarantors as set forth in Article 4 of the Security this Agreement, together with any other property of Borrower and the Guarantors in which the Banks hereafter acquire a security interest or mortgage.

"Commitment" means, with respect to each Bank, the obligation of such Bank to make its Loan under this Agreement in the principal amount following, as such amount may be reduced or otherwise modified from time to time: If the Target Acquisition closes on or before May 1, 1995:

The Chase Manhattan Bank, N.A.:	\$ 5,000,000.00 or \$3,750,000.001
Fleet Bank:	\$ 5,000,000.00 or \$3,750,000.00*
	-----
Total:	\$10,000,000.00

If the Target Acquisition does not close on or before May 1, 1995:

The Chase Manhattan Bank, N.A.:	\$ 5,000,000.00
Fleet Bank:	\$ 5,000,000.00
	-----
Total:	\$10,000,000.00

"Consolidated Capital Expenditures" means Capital Expenditures of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Current Assets" means Current Assets of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Current Liabilities" means Current Liabilities of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Subsidiary" means any Subsidiary whose accounts are or are required to be consolidated with the accounts of the Borrower in accordance with GAAP.

"Consolidated Tangible Net Worth" means Tangible Net Worth of the Borrower and its Consolidated Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

"Consolidated Total Liabilities" means the total liabilities of Borrower and its Subsidiaries as determined on a consolidated basis in accordance with GAAP.

"Credit Agreement - Term Loan Facility" means the agreement of even date between Borrower and the Banks under which the Banks have agreed to make Term Loans to Borrower.

"Current Assets" means all assets of the Borrower treated as current assets in accordance with GAAP.

"Current Debt Service" means current maturities of long term Debt.

"Current Liabilities" means all liabilities of the Borrower treated as current liabilities in accordance with GAAP, including without limitation (a) all obligations payable on demand or within one year after the date in which the determination is made and (b) installment and sinking fund payments required to be made within one year after the date on which determination is made, but excluding all such liabilities or obligations which are renew-able or extendable at the option of the Borrower to a date more than one year from the date of determination.

"Debt" means, with respect to any Person: (a) indebtedness of such Person for borrowed money; (b) indebtedness for the deferred purchase price of property or services (except trade payables in the ordinary course of business); (c) Unfunded Benefit Liabilities of such Person (if such Person is not the Borrower, determined in a manner analogous to that of determining Unfunded Benefit Liabilities of the Borrower); (d) the face amount of any outstanding letters of credit issued for the account of such Person; (e) obligations arising under acceptance facilities; (f) guaranties, endorsements (other than for collection in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; (g) obligations secured by any Lien on property of such Person; and (h) obligations of such Person as lessee under Capital Leases.

"Default" means any event which with the giving of notice or lapse of time, or both, would become an Event of Default.

"Default Rate" means, with respect to the principal of any Loan and, to the extent permitted by law, any other amount payable by the Borrower under this Agreement or any Note that is not paid when due (whether at stated maturity, by acceleration or otherwise), a rate per annum during the period from and including the due date, to, but excluding the date on which such amount is paid in full equal to 2% above the Variable Rate as in effect from time to time plus the Margin (if any) (provided that, if the amount so in default is principal of a Fixed Rate Loan and the due date thereof is a day other than the last day of the Interest Period therefor, the "Default Rate" for such principal shall be, for the period from and including the due date and to but excluding the last day of the Interest period therefor, 2% above the interest rate for such Loan as provided in Section 2.10 hereof and, thereafter, the Variable Rate plus 2% as provided for above in this definition).

"Dollars" and the sign "\$" mean lawful money of the United States of America.

"Drawdown Date" means the dates on which the Borrower makes the borrowing hereunder (which date may not be later than the last day of the Drawdown Period).

"Drawdown Period" means the period commencing on the date hereof and terminating on the Termination Date.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes.

"Equipment" means goods other than Inventory which are used or bought for use primarily in business, now existing or hereafter acquired, and the proceeds thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, including any rules and regulations promulgated

thereunder.

"ERISA Affiliate" means any corporation or trade or business which is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which the Borrower is a member, or (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which the Borrower is a member.

"Eurodollar Loan" (i.e., a "LIBOR Loan") means any Loan when and to the extent the interest rate therefor is determined on the basis of the definition "Fixed Base Rate."

"Event of Default" has the meaning given such term in Section 10.01.

"Facility Documents" means this Agreement and the Exhibits and Schedules hereto, the Notes, the Security Agreement, the Authorization Letter, and the Guaranty.

"Final Maturity Date" means April 1, 1998 when the final principal payment, all accrued interest, and any other amounts due under this Agreement or the Notes shall be due and payable in full.

"Fixed Base Rate" means with respect to any Interest Period for a Fixed Rate Loan, i.e., for a Eurodollar Loan, the arithmetic mean, as calculated by the Agent, of the respective rates per annum (rounded upwards, if necessary, to the nearest 1/16 of 1%) quoted at approximately 11:00 a.m. London time by the principal London branch of the Reference Bank two Banking Days prior to the first day of such Interest Period for the offering to leading banks in the London interbank market of Dollar deposits in immediately available funds, for a period, and in an amount, comparable to the Interest Period and principal amount of the Eurodollar Loan which shall be made by such Reference Bank and outstanding during such Interest Period.

"Fixed Rate" means, for any Fixed Rate Loan for any Interest Period therefor, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Agent to be equal to the quotient of (i) the Fixed Base Rate for such Loan for such Interest Period, divided by (ii) one minus the Reserve Requirement for such Loan for such Interest Period.

"Fixed Rate Loan" means any Eurodollar Loan.

"Fleet" means Fleet Bank.

"Forfeiture Proceeding" means any action, proceeding or investigation affecting the Borrower or any of its Subsidiaries or Affiliates before any court, governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or the receipt of notice by any such party that any of them is a suspect in or a target of any governmental inquiry or investigation, which may result in an indictment of any of them or the seizure or forfeiture of any of their property.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, applied on a basis consistent with those used in the preparation of the financial statements referred to in Section 5.05 (except for changes concurred in by the Borrower's independent certified public accountants).

"Guarantor" shall collectively mean all Subsidiaries and Affiliates of Borrower now or hereafter existing and their respective successors and assigns.

"Guaranty" means the guaranty in the form of Exhibit C to be delivered by the Guarantor under the terms of this Agreement.

"Interest Period" means, with respect to any Fixed Rate Loan, the period commencing on the date such Loan is made, converted from another type of Loan or renewed, as the case may be, and ending, as the Borrower may select

pursuant to Section 2.07, on the numerically corresponding day in the first, second, third, or sixth calendar month thereafter, provided that each such Interest Period which commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate calendar month.

"Inventory" means goods held for sale or lease or to be furnished under contracts of service, or raw materials, work-in-process or materials used or consumed in a business, now existing or hereafter arising, and the proceeds thereof.

"Lending Office" means, for each Bank and for each type of Loan, the lending office of such Bank (or of an affiliate of such Bank) designated as such for such type of Loan on its signature page hereof or such other office of such Bank (or of an affiliate of such Bank) as such Bank may from time to time specify to the Agent and the Borrower as the office by which its Loans of such type are to be made and maintained.

"Letter of Intent" means the nonbinding letter of intent (which has since been rescinded) between Borrower and Target dated November 9, 1994, a copy of which has been furnished to the Banks.

"Lien" means any lien (statutory or otherwise), security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any agreement to give any of the foregoing.

"Loan" means any loan made by a Bank pursuant to Section 2.01.

"Margin" means for each Variable Rate Loan and Eurodollar Loan the applicable margin on the following table, computed as of the date of this Agreement based upon Borrower's financial statements for the immediately preceding four Quarterly Dates for income statement items and the most recent Quarterly Date for balance sheet items, and adjusted thereafter on each Quarterly Date based on information for the immediately preceding four Quarterly Dates for income statement items and the immediately preceding Quarterly Date for balance sheet items.

Ratio of Total Funded Debt to Cash Flow	Ratio_1.5	1.5 ratio_2.5	2.5 ratio_3.5	3.5 ratio_4.0	Ratio 4.0
Applicable Margin - Fixed Rate Loans (Eurodollar)	100 basis points	125 basis points	150 basis points	175 basis points	225 basis points
Applicable Margin Variable Rate Loans (Prime)	0	0	25 basis points	50 basis points	100 basis points

The foregoing notwithstanding, it is agreed that from the date of this Agreement through March 31, 1996, the Applicable Margin for Fixed Rate Loans will be 150 basis points and the Applicable Margin for Variable Rate Loans will be 25 basis points.

"Measured Cash Flow" means the sum of the following measured on a consolidated basis for Borrower and any Subsidiaries, for any twelve month period ending on the last day of each of Borrower's fiscal quarters:

- (a) net income, plus
- (b) depreciation and all other non-cash charges to income not affecting working capital, minus
- (c) Capital Expenditures.

"Multiemployer Plan" means a Plan defined as such in Section 3(37) of ERISA to which contributions have been made by the Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Note" means a promissory note of the Borrower in the form of Exhibit A hereto evidencing the Loans made by a Bank hereunder.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"Plan" means any employee benefit or other plan established or maintained, or to which contributions have been made, by the Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Plan and Agreement of Merger" means the agreement among Borrower, CONMED Acquisition Corporation and Birtcher Medical Systems, Inc. dated as of December 5, 1994.

"Prime Rate" means that rate of interest from time to time announced by the Reference Bank at its principal office as its prime commercial lending rate.

"Principal Office" means the principal office of the Reference Bank, presently located at 1 Chase Manhattan Plaza, New York, New York 10081.

"Quarterly Date" means the last day of each of Borrower's fiscal quarters for so long as the Commitment and any Loans made pursuant to this Agreement remain outstanding.

"Reference Bank" means The Chase Manhattan Bank, N.A.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

"Regulatory Change" means, with respect to any Bank, any change after the date of this Agreement in United States federal, state, municipal or foreign laws or regulations (including without limitation Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including such Bank of or under any United States, federal, state, municipal or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"Required Banks" means, at any time while no Loans are outstanding, Banks having at least 75% of the aggregate amount of the Commitments and, at any time while Loans are outstanding, Banks holding at least 75% of the aggregate principal amount of the Loans.

"Reserve Requirement" means, for any Interest Period for any Fixed Rate Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (i) any category of liabilities which includes deposits by reference to which the Fixed Base Rate for Eurodollar Loans is to be determined

as provided in the definition of "Fixed Base Rate" in this Section 1.01 or (ii) any category of extensions of credit or other assets which include Eurodollar Loans.

"Security Agreement" means the security agreement in the form of Exhibit D to be executed by Borrower and each Guarantor pursuant to Sections 4.01 and 4.03 of this Agreement.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interests having ordinary voting power (absolutely or contingently) for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by such Person.

"Tangible Net Worth" means, at any date of determination thereof, the excess of total assets over total liabilities, excluding, however, from the determination of total assets: minority interests, if any, in Subsidiaries and the book value of intangible assets including, but not limited to, good will, organizational expenses, trademarks, trade names, licenses, patents, covenants not to compete, and capitalized research and development costs.

"Target" means the company identified in the Letter of Intent.

"Target Acquisition" means the purchase of substantially all of the assets of Target by Borrower or a wholly-owned subsidiary of Borrower on terms substantially similar (in the sole judgment of the Banks) to those set forth in the Letter of Intent.

"Termination Date" means April 1, 1998; provided that if such date is not a Banking Day, the Termination Date shall be the next succeeding Banking Day (or, if such next succeeding Banking Day falls in the next calendar month, the next preceding Banking Day).

"Term Loans" means loans to Borrower made by the Banks pursuant to the Credit Agreement - Term Loan Facility.

"Third Party" means a Guarantor.

"Total Funded Debt" means, with respect to Borrower and any Subsidiaries, all indebtedness (including current maturities) for money borrowed which by its terms matures more than one year from the date as of which such indebtedness is incurred, and any indebtedness for money borrowed maturing within one year from such date which is renewable or extendable at the option of the obligor to a date beyond one year from such date (whether or not theretofore renewed or extended), including any such indebtedness renewable or extendable at the option of the obligor under, or payable from the proceeds of other indebtedness which may be incurred pursuant to, the provisions of any revolving credit agreement or other similar agreement.

"Unfunded Benefit Liabilities" means, with respect to any Plan, the amount (if any) by which the present value of all benefit liabilities (within the meaning of Section 4001(a)(16) of ERISA) under the Plan exceeds the fair market value of all Plan assets allocable to such benefit liabilities, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA for calculating the potential liability of the Borrower or any ERISA Affiliate under Title IV of ERISA.

"Variable Rate" means, for any day, the Prime Rate for such day.

"Variable Rate Loan" means any Loan when and to the extent the interest rate for such Loan is determined in relation to the Variable Rate.

Section 1.02. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial data required to be delivered hereunder shall be prepared in accordance with GAAP. All terms relating to Collateral and not otherwise defined herein shall have the meanings ascribed to them in the Uniform Commercial Code of the State of New York.



ARTICLE 2. THE CREDIT.

Section 2.01. The Loans. (a) Subject to the terms and conditions of this Agreement, each of the Banks severally agrees to make loans (the "Loans") to the Borrower from time to time from and including the date hereof to and including the Termination Date up to but not exceeding the aggregate principal amount outstanding under its Commitment. The Loans may be outstanding as Variable Rate Loans or Fixed Rate Loans (each a "type" of Loans). The type of Loans of each Bank shall be made and maintained at such Bank's Lending Office for such type of Loans.

(b) The Loans shall be due and payable on the Final Maturity Date. Interest on the Loans shall be due and payable as hereinafter provided.

Section 2.02. The Notes. The Loans of each Bank shall be evidenced by a single promissory note in favor of such Bank in the form of Exhibit A, dated the date of this Agreement, duly completed and executed by the Borrower.

Section 2.03. Purpose. The Borrower shall use the proceeds of the Loans to consummate the Birtcher Acquisition in accordance with the Plan and Agreement or Merger, to consummate the Target Acquisition on terms substantially similar (in the sole judgment of the Banks) to those set forth in the Letter of Intent, to repay existing debt of Borrower to the Banks pursuant to that certain "Credit Agreement-Term Loan Facility" and that certain "Credit Agreement -- Revolving Credit Facility" each dated as of July 9, 1993, to pay fees, commissions, and expenses related to the Acquisitions, for working capital, and for general corporate purposes. Such proceeds shall not be used for the purpose, whether immediate, incidental or ultimate, of buying or carrying "margin stock" within the meaning of Regulation U.

Section 2.04. Borrowing Procedures. The Borrower shall make the borrowings hereunder not later than the last day of the Drawdown Period and shall give the Agent at least one Banking Day's notice of the date of such borrowing (which shall be a Banking Day if such day is not the last day of the Drawdown Period) for a Variable Rate Loan and at least three Banking Days' notice for a Fixed Rate Loan. Not later than 1:00 p.m. New York City time on the date of such borrowing, each Bank shall, through its Lending Office and subject to the conditions of this Agreement, make the amount of the Loan to be made by it on such day available to the Agent at the Agent's Office and in immediately available funds for the account of the Borrower. The amount so received by the Agent shall, subject to the conditions of this Agreement, be made available to the Borrower, in immediately available funds, by the Agent crediting an account of the Borrower designated by the Borrower and maintained with the Agent at the Agent's Office.

Section 2.05. Prepayments and Conversions. The Borrower shall have the right to make prepayments of principal, or to convert one type of Loan into another type of Loan, at any time or from time to time; provided that: (a) the Borrower shall give the Agent notice of each such prepayment or conversion as provided in Section 2.09; and (b) Fixed Rate Loans may be prepaid or converted only on the last day of an Interest Period for such Loans. During the Drawdown Period, Borrower may reborrow principal amounts prepaid provided that all conditions precedent hereunder are satisfied and provided that the principal amount outstanding from each Bank may not exceed the amount of its Commitment.

Section 2.06. Mandatory Prepayments. Anything herein to the contrary notwithstanding, Borrower shall be obligated to make the following prepayments ("Mandatory Prepayments") of amounts outstanding hereunder at the times indicated below, to the extent that any such amounts remain after application to amounts outstanding under the Credit Agreement -- Term Loan Facility, as provided in Section 2.06 of that Agreement:

(a) 100% of the net proceeds in excess of \$100,000 received by Borrower from the sale or disposition of all or any part of the assets of Borrower or its subsidiaries (other than in the ordinary course of business), upon Borrower's (or the Subsidiary's, as appropriate) receipt of such proceeds;

(b) 100% of all insurance proceeds received by Borrower which are not reasonably promptly applied toward repair or replacement of the damaged, destroyed, or impaired property to which such proceeds relate, upon receipt by Borrower of such proceeds; and

(c) 30% of the proceeds of the sale by Borrower of any equity securities of Borrower (other than shares sold to employees pursuant to employee stock option plans), upon receipt by Borrower of such proceeds.

Any Mandatory Prepayments shall be applied without penalty or premium (other than costs associated with the mandatory prepayment of Fixed Rate Loans on dates other than the last day of the Interest Period with respect to each such Loan) as determined by each Bank in its sole discretion. Mandatory Prepayments shall be divided among the Banks based upon each Bank's pro rata share of the amounts outstanding hereunder at the time of the Mandatory Prepayment.

Section 2.07. Fixed Rate Loans - Interest Periods; Renewals. (a) In the case of each Fixed Rate Loan, the Borrower shall select an Interest Period of any duration in accordance with the definition of Interest Period in Section 1.01, subject to the following limitations: (i) no Interest Period may extend beyond the Final Maturity Date; (ii) notwithstanding clause (i) above, no Interest Period shall have a duration less than one month, and if any such proposed Interest Period would otherwise be for a shorter period, such Interest Period shall not be available; (iii) if an Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day, unless such Banking Day would fall in the next calendar month in which event such Interest Period shall end on the immediately preceding Banking Day; (iv) only three Fixed Rate Interest Periods may be outstanding at any one time.

(b) Upon notice to the Agent as provided in Section 2.09, the Borrower may renew any Fixed Rate Loan on the last day of the Interest Period therefor as the same type of Loan with an Interest Period of the same or different duration in accordance with the limitations provided above. If the Borrower shall fail to give notice to the Agent of such a renewal, such Fixed Rate Loan shall automatically become a Variable Rate Loan on the last day of the current Interest Period.

Section 2.08. Changes of Commitments. The Borrower shall have the right to reduce or terminate the amount of unused Commitments at any time or from time to time, provided that: (a) the Borrower shall give notice of each such reduction or termination to the Agent as provided in Section 2.09; and (b) each partial reduction shall be pro rata for each Banks and shall be at least equal to \$250,000 for each Bank. The Commitments once reduced or terminated may not be reinstated.

Section 2.09. Certain Notices. All notices by the Borrower to the Agent pursuant to this Article 2 shall be given on a Banking Day and shall be given first by telephone and confirmed by telecopier. Such notices shall be irrevocable and shall be effective as of the date given only if the telecopy confirmation is received by the Agent not later than 1:00 p.m. New York City time. Where telecopy confirmation is received by the Agent after 1:00 p.m., the notice shall be deemed to be given as of the next Banking Day. In the case of borrowings and prepayments of, conversions into and renewals of (a) Variable Rate Loans, such notices shall be given one Banking Day prior thereto; (b) and in the case of Fixed Rate Loans such notices shall be given three Banking Days prior thereto. Each notice shall specify the type of Loans to be borrowed, converted, prepaid or renewed (and, in the case of a conversion, the type of Loans to result from such conversion and, in the case of Fixed Rate Loans, the Interest Period(s) therefor) and the date of the borrowing, prepayment, conversion or renewal (which shall be a Banking Day). Each notice of reduction or termination shall specify the amount of the Commitments to be reduced or terminated. Notices shall be similar in form to the attached Exhibit I. The Agent shall promptly notify the Banks of the contents of each such notice.

Section 2.10. Minimum Amounts. Except for borrowings which exhaust the

full remaining amounts of the Commitments, prepayments or conversions which result in the prepayment or conversion of all Loans of a particular type or conversions made pursuant to Section 3.04, each borrowing, prepayment, conversion and renewal of principal the Loans of a particular type shall be in an amount at least equal to \$500,000 in the aggregate for each Bank (borrowings, prepayments, conversions or renewals of or into Loans of different types or, in the case of Fixed Rate Loans, having different Interest Periods at the same time hereunder to be deemed separate borrowings, prepayments, conversions and renewals for the purposes of the foregoing, one for each type of Interest Period). Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of Fixed Rate Loans having concurrent Interest Periods shall be at least equal to \$ 500,000 in the aggregate for each Bank.

Section 2.11. Interest. (a) Interest shall accrue on the outstanding and unpaid principal amount of each Loan for the period from and including the date of such Loan to but excluding the date such Loan is due at the following rates per annum: (i) for a Variable Rate Loan, at a variable rate per annum equal to the Variable Rate plus any Margin and (ii) for a Fixed Rate Loan, at a fixed rate equal to the Fixed Rate plus the Margin. If the principal amount of any Loan and any other amount payable by the Borrower hereunder or under the Note shall not be paid when due (at stated maturity, by acceleration or otherwise), interest shall accrue on such amount to the fullest extent permitted by law from and including such due date to but excluding the date such amount is paid in full at the Default Rate.

(b) The interest rate on each Variable Rate Loan shall change when the Variable Rate changes and interest on each such Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Interest on each Fixed Rate Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Promptly after the determination of any interest rate provided for herein or any change therein, the Agent shall notify the Borrower and the Banks.

(c) Accrued interest shall be due and payable in arrears upon any payment of principal or conversion and (i) for each Variable Rate Loan, on the first day of each calendar quarter commencing the first such date after such Loan; (ii) for each Fixed Rate Loan, on the last day of the Interest Period with respect thereto and, in the case of an Interest Period greater than three months at three-month intervals (determined on the same basis as a three month Interest Period) after the first day of such Interest Period; provided that interest accruing at the Default Rate shall be due and payable from time to time on demand of the Agent.

Section 2.12. Fees. (a) During the period from the date of this Agreement through the earlier of the date the Commitments are terminated or March 31, 1996, the Borrower shall pay to the Agent for the account of each Bank a commitment fee on the daily average unused Commitment of such Bank equal to three-eighths percent (.375%). Commencing April 1, 1996, the Borrower shall pay to the Agent for the account of each Bank a commitment fee on the daily average unused Commitment of such Bank for the period from and including April 1, 1996, to the earlier of the date the Commitments are terminated or the Termination Date, at a rate per annum equal to the amount on the following table computed as of the date of this Agreement based upon Borrower's financial statements for the immediately preceding four Quarterly Dates for income statement items and the most recent Quarterly Date for balance sheet items, and adjusted thereafter on each Quarterly Date based on information for the immediately preceding four Quarterly Dates for income statement items and the immediately preceding Quarterly Date for balance sheet items.

Ratio of Total Funded Debt to Cash Flow	Ratio _ 1.5	1.5 Ratio _ 2.5	2.5 Ratio _ 3.5	3.5 Ratio _ 4.0	Ratio 4.0
Commitment Fee	.25%	.375%	.375%	.375%	.5%

The commitment fee shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. The accrued commitment fee shall be

due and payable in arrears upon any reduction or termination of the Commitments and on the 1st day of each calendar quarter, commencing on July 1, 1995.

(b) The Borrower shall pay to the Agent an agency fee (in cash or such other type of compensation as may be mutually agreed), in the amount (and on the dates) heretofore mutually agreed.

Section 2.13. Payments Generally. All payments under this Agreement or the Notes shall be made to the Agent in immediately available funds not later than 1:00 p.m. New York City time on the relevant dates specified in this Article 2, and such payment received by Agent after 1:00 p.m. shall be deemed to have been made on the next succeeding Banking Day. The Borrower shall, at the time of making each payment under this Agreement or the Notes, by telecopy specify to the Agent the principal or other amount payable by the Borrower under this Agreement or the Notes to which such payment is to be applied (and in the event that it fails to so specify, or if a Default or Event of Default has occurred and is continuing, the Agent may apply such payment as it may elect in its sole discretion (subject to Section 11.16)). Borrower shall make all payments through its deposit account with Agent and Agent is hereby authorized to deduct all payments due hereunder from such account. Except as otherwise provided herein, if the due date of any payment under this Agreement or the Notes would otherwise fall on a day which is not a Banking Day, such date shall be extended to the next succeeding Banking Day and interest shall be payable for any principal so extended for the period of such extension. Provided the Agent receives payment in immediately available funds by 1:00 p.m. on a Banking Day, Agent shall remit the portion of such payment due to each of the Banks by wire transfer initiated prior to 3:00 p.m. on the same Banking Day. If payment is not received on a Banking Day or by 1:00 p.m., Agent shall remit the amount of such payment due Fleet by wire transfer on the next Banking Day.

Any Bank may (but shall not be obligated to) debit the amount of any such payment which is not made by 4:00 p.m. on the first Banking Day after the due date to any ordinary deposit account of the Borrower with such Bank, and any Bank so doing shall promptly notify the Agent.

Section 2.14. Late Payment Fees. (a) If Borrower fails to make any payment when due, Agent, at the request of the Required Banks, may require the payment of a late charge to be assessed each day on the amount overdue based upon the following formulas:

(i) For overdue interest:

$$\frac{(\text{Amount overdue}) \times 110\% \times (\text{Prime Rate} + 2\%)}{365}$$

(ii) For overdue principal:

$$\frac{(\text{Amount overdue}) \times 110\% \times (\text{Prime Rate} + 2\%)}{365}$$

(b) Late charges may be added to the amount owing on any future payment, and such assessment and/or collection of late charges shall in no way impair the Banks' right to pursue any other rights or remedies they may have upon default.

### ARTICLE 3. YIELD PROTECTION; ILLEGALITY; ETC.

Section 3.01. Additional Costs. (a) The Borrower shall pay directly to each Bank from time to time on demand such amounts as such Bank may determine to be necessary to compensate it for any costs which such Bank determines are attributable to its making or maintaining any Fixed Rate Loans under this Agreement or its Note or its obligation to make any such Loans hereunder, or any reduction in any amount receivable by such Bank hereunder in respect of any such Loans or such obligation (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any Regulatory Change which: (i) changes the basis of taxation of any amounts payable to such Bank under this Agreement or its Note in respect of any of such

Loans (other than taxes imposed on the overall net income of such Bank or of its Lending Office for any of such Loans by the jurisdiction in which such Bank has its principal office or such Lending Office); or (ii) imposes or modifies any reserve, special deposit, deposit insurance or assessment, minimum capital, capital ratio or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Bank (including any of such Loans or any deposits referred to in the definition of "Fixed Base Rate" in Section 1.01); or (iii) imposes any other condition affecting this Agreement or its Note (or any of such extensions of credit or liabilities). Each Bank will notify the Borrower of any event occurring after the date of this Agreement which will entitle such Bank to compensation pursuant to this Section 3.01(a) as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. If any Bank requests compensation from the Borrower under this Section 3.01(a), or under Section 3.01(c), the Borrower may, by notice to such Bank (with a copy to the Agent), require that such Bank's Loans of the type with respect to which such compensation is requested be converted in accordance with Section 3.04.

(b) Without limiting the effect of the foregoing provisions of this Section 3.01, in the event that, by reason of any Regulatory Change, any Bank either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Bank which includes deposits by reference to which the interest rate on Eurodollar loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Bank which includes Eurodollar loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, then, if such Bank so elects by notice to the Borrower (with a copy to the Agent), the obligation of such Bank to make or renew, and to convert Loans of any other type into, Loans of such type hereunder shall be suspended until the date such Regulatory Change ceases to be in effect (and all Loans of such type held by such Bank then outstanding shall be converted in accordance with Section 3.04).

(c) Without limiting the effect of the foregoing provisions of this Section 3.01 (but without duplication), the Borrower shall pay directly to each Bank from time to time on request such amounts as such Bank may determine to be necessary to compensate such Bank for any costs which it determines are attributable to the maintenance by it or any of its affiliates pursuant to any law or regulation of any jurisdiction or any interpretation, directive or request (whether or not having the force of law and whether in effect on the date of this Agreement or thereafter) of any court or governmental or monetary authority of capital in respect of its Loans hereunder or its obligation to make Loans hereunder (such compensation to include, without limitation, an amount equal to any reduction in return on assets or equity of such Bank to a level below that which it could have achieved but for such law, regulation, interpretation, directive or request). Each Bank will notify the Borrower if it is entitled to compensation pursuant to this Section 3.01(c) as promptly as practicable after it determines to request such compensation.

(d) Determinations and allocations by a Bank for purposes of this Section 3.01 of the effect of any Regulatory Change pursuant to subsections (a) or (b), or of the effect of capital maintained pursuant to subsection (c), on its costs of making or maintaining Loans or its obligation to make Loans, or on amounts receivable by, or the rate of return to, it in respect of Loans or such obligation, and of the additional amounts required to compensate such Bank under this Section 3.01, shall be conclusive, provided that such determinations and allocations are made on a reasonable basis.

Section 3.02. Limitation on Types of Loans. Anything herein to the contrary notwithstanding, if:

(a) the Agent determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of "Fixed Base Rate" in Section 1.01 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining the rate of interest for any type of Fixed Rate Loans as provided in this Agreement; or

(b) the Required Banks determine (which determination shall be conclusive) and notify the Agent that the relevant rates of interest referred to in the definition of "Fixed Base Rate" in Section 1.01 upon the basis of which the rate of interest for any type of Fixed Rate Loans is to be determined do not adequately cover the cost to the Banks of making or maintaining such Loans; then the Agent shall give the Borrower and each Bank prompt notice thereof, and so long as such condition remains in effect, the Banks shall be under no obligation to make or renew Loans of such type or to convert Loans of any other type into Loans of such type and the Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding Loans of the affected type, either prepay such Loans or convert such Loans into another type of Loans in accordance with Section 2.05.

Section 3.03. Illegality. Notwithstanding any other provision in this Agreement, in the event that it becomes unlawful for any Bank or its Lending Office to (a) honor its obligation to make or renew Eurodollar Loans hereunder or convert Loans of any type into Loans of such type, or (b) maintain Eurodollar Loans hereunder, then such Bank shall promptly notify the Borrower thereof (with a copy to the Agent) and such Bank's obligation to make or renew Eurodollar Loans and to convert other types of Loans into Loans of such type hereunder shall be suspended until such time as such Bank may again make, renew, or convert and maintain such affected Loans and such Bank's outstanding Eurodollar Loans, as the case may be, shall be converted in accordance with Section 3.04.

Section 3.04. Certain Conversions pursuant to Sections 3.01 and 3.03. If the Loans of any Bank of a particular type (Loans of such type being herein called "Affected Loans" and such type being herein called the "Affected Type") are to be converted pursuant to Section 3.01 or 3.03, such Bank's Affected Loans shall be automatically converted into Variable Rate Loans on the last day(s) of the then current Interest Period(s) for the Affected Loans (or, in the case of a conversion required by Section 3.01(b) or 3.03, on such earlier date as such Bank may specify to the Borrower with a copy to the Agent) and, unless and until such Bank gives notice as provided below that the circumstances specified in Section 3.01 or 3.03 which gave rise to such conversion no longer exist:

(a) to the extent that such Bank's Affected Loans have been so converted, all payments and prepayments of principal which would otherwise be applied to such Bank's Affected Loans shall be applied instead to its Variable Rate Loans;

(b) all Loans which would otherwise be made or renewed by such Bank as Loans of the Affected Type shall be made instead as Variable Rate Loans and all Loans of such Bank which would otherwise be converted into Loans of the Affected Type shall be converted instead into (or shall remain as) Variable Rate Loans; and

If such Bank gives notice to the Borrower (with a copy to the Agent) that the circumstances specified in Section 3.01 or 3.03 which gave rise to the conversion of such Bank's Affected Loans pursuant to this Section 3.04 no longer exist (which such Bank agrees to do promptly upon such circumstances ceasing to exist) at a time when Loans of the Affected Type are outstanding, such Bank's Variable Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Loans of the Affected Type to the extent necessary so that, after giving effect thereto, all Loans held by the Banks holding Loans of the Affected Type and by such Bank are held pro rata (as to principal amounts, types and Interest Periods) in accordance with their respective Commitments.

Section 3.05. Certain Compensation. The Borrower shall pay to the Agent for the account of each Bank, upon the request of such Bank through the Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Bank) to compensate it for any loss, cost or expense which such Bank determines is attributable to:

(a) any payment, prepayment, conversion or renewal of a Fixed Rate Loan made by such Bank on a date other than the last day of an Interest Period for such Loan (whether by reason of acceleration, mandatory prepayment or otherwise); or

(b) any failure by the Borrower to borrow, convert into or renew a Fixed Rate Loan to be made, converted into or renewed by such Bank on the date specified therefor in the relevant notice under Section 2.04, 2.05 or 2.07, as the case may be.

Without limiting the foregoing, such compensation shall include an amount equal to the excess, if any, of: (i) the amount of interest which otherwise would have accrued on the principal amount so paid, prepaid, converted or renewed or not borrowed, converted or renewed for the period from and including the date of such payment, prepayment or conversion or failure to borrow, convert or renew to but excluding the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, convert or renew, to but excluding the last day of the Interest Period for such Loan which would have commenced on the date specified therefor in the relevant notice) at the applicable rate of interest for such Loan provided for herein; over (ii) the amount of interest (as reasonably determined by such Bank) such Bank would have bid in the London interbank market for Dollar deposits for amounts comparable to such principal amount and maturities comparable to such period. A determination of any Bank as to the amounts payable pursuant to this Section 3.05 shall be conclusive absent manifest error.

Section 3.06. HLT Classification. If, after the date hereof, the Agent is advised by any Bank that such Bank has received notice from any governmental authority, central bank or comparable agency having jurisdiction over such Bank that the definition of highly leveraged transaction has been modified with the result that its Loans hereunder are classified as a "highly leveraged transaction" (an "HLT Classification") or if the Borrower takes any action which causes this transaction to be subject to HLT Classification, the Agent shall promptly give notice of such HLT Classification to the Borrower and the other Banks and the Agent. The Banks and the Borrower shall commence negotiations in good faith to agree on whether and, if so, the extent to which commitment fees, interest rates and/or margins hereunder should be increased so as to reflect such HLT Classification. If the Borrower and the Required Banks fail to agree on such increases within 10 days after notice is given by the Agent as provided above, then (i) the Agent, if requested by the Required Banks shall, by notice to the Borrower immediately terminate the Commitments, and (ii) the Borrower shall be obligated to prepay on the date of such termination of the Commitments each outstanding Loan by paying the aggregate principal amount to be prepaid together with all accrued interest thereon to the date of such prepayment; provided that, if the Borrower prepays any Fixed Rate Loans pursuant to this clause, the Borrower shall compensate the Banks for any resulting funding losses. The Banks acknowledge that a HLT Classification is not a Default or an Event of Default hereunder.

#### ARTICLE 4. COLLATERAL SECURITY.

Section 4.01 Security. As security for the payment of all Loans made hereunder and for the obligations of each Guarantor under its Guaranty, Borrower and the Guarantors hereby agree that the Banks shall at all times have, pursuant to a Security Agreement executed concurrently herewith in the Form of Exhibit D, a continuing general security interest in all personal property of Borrower and each Guarantor as more described in the Security Agreement:

Section 4.02 Setoff. As additional collateral security for the payment of the Notes and of any and all other obligations and liabilities of Borrower and the each Guarantors to the Banks hereunder, whether due or to become due, direct or contingent, now existing or hereafter arising, and however created or acquired, the Banks shall at all times have and are hereby given a security interest in and a lien upon and right of offset against all moneys, deposit balances, securities or other property or interest therein of Borrower and the each Guarantors now or at any time after the date of this Loan Agreement held or received by or for or left in the possession or control of any of the Banks, whether for safekeeping, custody, transmission, collection, pledge or for any other or different purpose. The foregoing right of setoff shall at all times be subject to the Banks' obligation to share payments as set forth in Section 11.17.

Section 4.03 Guaranties. Each Guarantor shall execute and deliver a Guaranty to each of the Banks, and a Security Agreement granting the Banks a security interest in all of the Guarantor's personal property as set forth in Section 4.01.

ARTICLE 5. CONDITIONS PRECEDENT.

Section 5.01. Documentary Conditions Precedent. The obligations of the Banks to make the Loans constituting the initial borrowing hereunder are subject to the condition precedent that the Agent and the Banks shall have received on or before the date of such Loans each of the following, in form and substance satisfactory to the Agent, the Banks, and their counsel:

- (a) the Notes duly executed by the Borrower;
- (b) the Authorization Letter duly executed by the Borrower;
- (c) Security Agreements and UCC-1 Financing Statements duly executed by the Borrower and each Guarantor;
- (d) the Guaranty duly executed by each Guarantor;
- (e) a certificate of the Secretary or Assistant Secretary of the Borrower, dated the Closing Date, attesting to all corporate action taken by the Borrower, including resolutions of its Board of Directors and sole shareholder authorizing the execution, delivery and performance of the Facility Documents to which it is a party and each other document to be delivered pursuant to this Agreement;
- (f) a certificate of the Secretary or Assistant Secretary of the Borrower, dated the Closing Date, certifying the names and true signatures of the officers of the Borrower authorized to sign the Facility Documents to which it is a party and the other documents to be delivered by the Borrower under this Agreement;
- (g) a certificate of a duly authorized officer of the Borrower, dated the Closing Date, stating that the representations and warranties in Article 6 are true and correct on such date as though made on and as of such date and that no event has occurred and is continuing which constitutes a Default or Event of Default;
- (h) a favorable opinion of counsel for the Borrower, dated the Closing Date, in substantially the form of Exhibit E and as to such other matters as the Agent or any Bank may reasonably request;
- (i) a certificate of the Secretary or Assistant Secretary of each Third Party, dated the Closing Date, attesting to all corporate action taken by the Third Party, including resolutions of its Board of Directors authorizing the execution, delivery and performance of the Facility Documents to which it is a party;
- (j) a certificate of the Secretary or Assistant Secretary of each Third Party, dated the Closing Date, certifying the names and true signatures of the officers of each Third Party authorized to sign the Facility Documents to which it is a party;
- (k) a favorable opinion of counsel for each Third Party dated the Closing Date, in substantially the form of Exhibit F and as to such other matters as the Agent or any Bank may reasonably request;
- (l) a certificate of a duly authorized officer of each Third Party, dated the Closing Date, stating that the representations and warranties in the Facility Documents to which it is a party are true and correct on such date as though made on and as of such date and that no event has occurred and is continuing which constitutes a Default or Event of Default, and



(m) Certificates from the applicable Secretaries of State showing Borrower and each Third Party to be corporations in good standing in the States of their incorporation.

Section 5.02. Additional Conditions Precedent. The obligations of the Banks to make any Loans pursuant to a borrowing which increases the amount outstanding hereunder (including the initial borrowing) shall be subject to the further conditions precedent that on the date of such Loans:

(a) the following statements shall be true:

(i) the representations and warranties contained in Article 6 and in any other Facility Document are true and correct on and as of the date of such Loans as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing, or would result from such Loans.

(b) The Banks shall have reviewed, and shall be satisfied with, the terms and conditions of, and the documentation relating to, the Acquisitions, and the other transactions contemplated hereby. The Banks shall also have reviewed, and shall be satisfied with, the pro forma financial statements for the combined operations of Borrower, Birtcher Medical Systems, Inc. and Target as of the closing of each Acquisition.

(c) The Banks shall have reviewed, and shall be satisfied with, the Borrower's projections and pro forma financial statements reflecting the forecasted financial condition, income and expenses of the Borrower and its Subsidiaries after giving effect to each Acquisition, the borrowings under this Agreement, and any other transactions contemplated hereby, and the Bank's continuing satisfaction with the condition (financial and other), operations, assets, nature of assets, liabilities and prospects of the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(d) The Banks shall have reviewed, and shall be satisfied with, (i) the Borrower's tax assumptions, and (ii) the corporate, organizational, capital, and legal structure of the Borrower, Birtcher Medical Systems, Inc., Target and their respective Subsidiaries.

(e) The Banks shall be satisfied that the borrowings under this Agreement and other funding for the Acquisitions are in full compliance with all legal requirements, including without limitation Regulations G, T, U and X of the Board of Governors of the Federal Reserve System, and that the Acquisitions are in compliance with all applicable legal requirements including, if applicable, the Hart-Scott-Rodino Act, and all securities law requirements.

(f) The Banks shall be satisfied that the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries comply in all material respects with all applicable U.S. federal, state and local laws and regulations, including all Environmental Laws.

(g) The Banks shall have reviewed, and shall be satisfied with, an environmental risk assessment (including the potential levels of environmental liability set forth therein) with respect to Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(h) The Banks shall have reviewed, and shall be satisfied with, the insurance program of the Borrower, Birtcher Medical Systems, Inc., Target, and their respective Subsidiaries.

(i) The Banks shall have reviewed, and shall be satisfied with, all financial information concerning each Acquisition furnished to Borrower pursuant to the agreements memorializing the Acquisitions.

(j) The Banks shall have reviewed, and shall be satisfied with, information concerning any litigation relating to or arising out of either of the Acquisitions or any of the other transactions contemplated by this

Agreement.

(k) the Agent shall have received such other approvals, opinions or documents as the Agent or any Bank may reasonably request.

(k) warranties to each Bank from each Subsidiary shall be in full force and effect and unrevoked.

Section 5.03. Term Loan Borrowings. The obligations of the Banks to make any Loans hereunder shall be subject to the further condition precedent that Borrower shall have borrowed the full amount committed by the Banks under the Credit Agreement - Term Loan Facility.

Section 5.04. Deemed Representations. Each notice of borrowing hereunder and acceptance by the Borrower of the proceeds of such borrowing shall constitute a representation and warranty that the statements contained in Section 5.02(a) are true and correct both on the date of such notice and, unless the Borrower otherwise notifies the Agent prior to such borrowing, as of the date of such borrowing.

#### ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

The Borrower hereby represents and warrants that:

Section 6.01. Incorporation, Good Standing and Due Qualification. Each of the Borrower and its Subsidiaries is duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 6.02. Corporate Power and Authority; No Conflicts. The execution, delivery and performance by the Borrower of the Facility Documents to which it is a party have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of its stockholders; (b) contravene its charter or by-laws; (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation (including, without limitation, Regulation U), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower or any of its Subsidiaries or Affiliates; (d) result in a breach of or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Borrower is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien upon or with respect to any of the properties now owned or hereafter acquired by the Borrower; or (f) cause the Borrower (or any Subsidiary or Affiliate, as the case may be) to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 6.03. Legally Enforceable Agreements. Each Facility Document to which the Borrower is a party is, or when delivered under this Agreement will be, a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 6.04. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened, against or affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Borrower or any such Subsidiary or of the ability of the Borrower to perform its obligations under the Facility Documents to which it is a party.

Section 6.05. Financial Statements. The consolidated balance sheet of

the Borrower and its Consolidated Subsidiaries as at December 30, 1994, and the related consolidated income statement and statements of cash flows and changes in stockholders' equity of the Borrower and its Consolidated Subsidiaries for the fiscal year then ended, and the accompanying footnotes, together with the opinion thereon, of Price Waterhouse LLP, independent certified public accountants, copies of which have been furnished to each of the Banks, are complete and correct and fairly present the financial condition of the Borrower and its Consolidated Subsidiaries as at such date and the results of the operations of the Borrower and its Consolidated Subsidiaries for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to adjustments under Financial Accounting Standards 106 and 109). There are no liabilities of the Borrower or any of its Consolidated Subsidiaries, fixed or contingent, which are material but are not reflected in the financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business since December 30, 1994. No information, exhibit or report furnished by the Borrower to the Banks in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not materially misleading. Since December 30, 1994, there has been no material adverse change in the condition (financial or otherwise), business, operations or prospects of the Borrower or any of its Subsidiaries.

Section 6.06. Ownership and Liens. Each of the Borrower and its Consolidated Subsidiaries has title to, or valid leasehold interests in, all of its properties and assets, real and personal, including the properties and assets, and leasehold interests reflected in the financial statements referred to in Section 6.05 (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Borrower or any of its Subsidiaries and none of its leasehold interests is subject to any Lien, except as disclosed in such financial statements or as may be permitted hereunder.

Section 6.07. Taxes. Each of the Borrower and its Subsidiaries has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. The federal income tax liability of the Borrower and its Subsidiaries has been audited by the Internal Revenue Service and has been finally determined and satisfied for all taxable years up to and including the taxable year ended in [1990].

Section 6.08. ERISA. Each Plan, and, to the best knowledge of the Borrower, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other applicable Federal or state law, and no event or condition is occurring or exists concerning which the Borrower would be under an obligation to furnish a report to the Bank in accordance with Section 7.08(h) hereof. The funded status of each Plan is as set forth in Schedule IV.

Section 6.09. Subsidiaries and Ownership of Stock. Schedule I is a complete and accurate list of the Subsidiaries of the Borrower, showing the jurisdiction of incorporation or organization of each Subsidiary and showing the percentage of the Borrower's ownership of the outstanding stock or other interest of each such Subsidiary. All of the outstanding capital stock or other interest of each such Subsidiary has been validly issued, is fully paid and nonassessable and is owned by the Borrower free and clear of all Liens.

Section 6.10. Credit Arrangements. Schedule II is a complete and correct list of all credit agreements, indentures, installment purchase agreements, guaranties, Capital Leases and other investments, agreements and arrangements presently in effect providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Borrower or any of its Subsidiaries is in any manner directly or contingently obligated; and the maximum principal or face amounts of the credit in question, outstanding and which can be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefor are correctly described or indicated in such Schedule.

Section 6.11. Operation of Business. Each of the Borrower and its Subsidiaries possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, necessary to conduct its business substantially as now conducted and as presently proposed to be conducted, and neither the Borrower nor any of its Subsidiaries is in violation of any valid rights of others with respect to any of the foregoing.

Section 6.12. Hazardous Materials. The Borrower and each of its Subsidiaries have obtained all permits, licenses and other authorizations which are required under all Environmental Laws, except to the extent failure to have any such permit, license or authorization would not have a material adverse effect on the consolidated financial condition, operations, business or prospects of the Borrower and its Consolidated Subsidiaries. The Borrower and each of its Subsidiaries are in compliance with the terms and conditions of all such permits, licenses and authorizations, and are also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, except to the extent failure to comply would not have a material adverse effect on the consolidated financial condition, operations, business or prospects of the Borrower and its Consolidated Subsidiaries.

In addition, except as set forth in Schedule III hereto:

(a) No notice, notification, demand, request for information, citation, summons or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or threatened by any governmental or other entity with respect to any alleged failure by the Borrower or any of its Subsidiaries to have any permit, license or authorization required in connection with the conduct of the business of the Borrower or any of its Subsidiaries or with respect to any generation, treatment, storage, recycling, transportation, release or disposal, or any release as defined in 42 U.S.C. ss. 9601(22) ("Release"), of any substance regulated under Environmental Laws ("Hazardous Materials") generated by the Borrower or any of its Subsidiaries.

(b) Neither the Borrower nor any of its Subsidiaries has handled any Hazardous Material, other than as a generator, on any property now or previously owned or leased by the Borrower or any of its Subsidiaries to an extent that it has, or may reasonably be expected to have, a material adverse effect on the consolidated financial condition, operations, business or prospects taken as a whole of the Borrower and its Consolidated Subsidiaries; and

- (i) no polychlorinated biphenyl is or has been present at any property now or previously owned or leased by the Borrower or any of its Subsidiaries;
- (ii) no asbestos is or has been present at any property now or previously owned or leased by the Borrower or any of its Subsidiaries;
- (iii) there are no underground storage tanks for Hazardous Materials, active or abandoned, at any property now or previously owned or leased by the Borrower or any of its Subsidiaries; and
- (iv) no Hazardous Materials have been Released, in a reportable quantity, where such a quantity has been established by statute, ordinance, rule, regulation or order, at, on or under any property now or previously owned by the Borrower or any of its Subsidiaries.

(c) Neither the Borrower nor any of its Subsidiaries has transported or arranged for the transportation of any Hazardous Material to any location which is listed on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), listed for possible inclusion on the National Priorities List by the Environmental Protection Agency in the Comprehensive Environmental Response and Liability

Information System as provided by 40 C.F.R. ss. 300.5 ("CERCLIS") or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which may lead to claims against the Borrower or any of its Subsidiaries for clean-up costs, remedial work, damages to natural resources or for personal injury claims, including, but not limited to, claims under CERCLA.

(d) No Hazardous Material generated by the Borrower or any of its Subsidiaries has been recycled, treated, stored, disposed of or released (as defined in CERCLA) by the Borrower or any of its Subsidiaries at any location other than those listed in Schedule III hereto.

(e) No oral or written notification of a Release of a Hazardous material has been filed by or on behalf of the Borrower or any of its Subsidiaries and no property now or previously owned or leased by the Borrower or any of its Subsidiaries is listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS or on any similar state list of sites requiring investigation or clean-up.

(f) There are no Liens arising under or pursuant to any Environmental Laws on any of the real property or properties owned or leased by the Borrower or any of its Subsidiaries, and no government actions have been taken or are in process which could subject any of such properties to such Liens and neither the Borrower nor any of its Subsidiaries would be required to place any notice or restriction relating to the presence of Hazardous Materials at any property owned by it in any deed to such property.

(g) There have been no environmental investigations, studies, audits, test, reviews or other analyses conducted by or which are in the possession of the Borrower or any of its Subsidiaries in relation to any property or facility now or previously owned or leased by the Borrower or any of its Subsidiaries which have not been made available to the Banks.

Section 6.13. No Default on Outstanding Judgments or Orders. Each of the Borrower and its Subsidiaries has satisfied all judgments and neither the Borrower nor any of its Subsidiaries is in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

Section 6.14. No Defaults on Other Agreements. Neither the Borrower nor any of its Subsidiaries is a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations or conditions, financial or otherwise, of the Borrower or any of its Subsidiaries, or the ability of the Borrower or any of its Subsidiaries to carry out its obligations under the Facility Documents to which it is a party. Neither the Borrower nor any of its Subsidiaries is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument material to its business to which it is a party.

Section 6.15. Labor Disputes and Acts of God. Neither the business nor the properties of the Borrower or of any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), materially and adversely affecting such business or properties or the operation of the Borrower or such Subsidiary.

Section 6.16. Governmental Regulation. Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Interstate Commerce Act, the Federal Power Act or any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 6.17. Partnerships. Neither the Borrower nor any of its Subsidiaries is a partner in any partnership.

Section 6.18. No Forfeiture. Neither the Borrower nor any of its Subsidiaries or Affiliates is engaged in or proposes to be engaged in the conduct of any business or activity which could result in a Forfeiture Proceeding and no Forfeiture Proceeding against any of them is pending or threatened.

Section 6.19. Solvency.

(a) The present fair saleable value of the assets of the Borrower after giving effect to all the transactions contemplated by the Facility Documents and the funding of all Commitments hereunder exceeds the amount that will be required to be paid on or in respect of the existing debts and other liabilities (including contingent liabilities) of the Borrower and its Subsidiaries as they mature.

(b) The property of the Borrower does not constitute unreasonably small capital for the Borrower to carry out its business as now conducted and as proposed to be conducted including the capital needs of the Borrower.

(c) The Borrower does not intend to, nor does it believe that it will, incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be received by the Borrower, and of amounts to be payable on or in respect of debt of the Borrower). The cash available to the Borrower after taking into account all other anticipated uses of the cash of the Borrower, is anticipated to be sufficient to pay all such amounts on or in respect of debt of the Borrower when such amounts are required to be paid.

(d) The Borrower does not believe that final judgments against it in actions for money damages will be rendered at a time when, or in an amount such that, the Borrower will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum reasonable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered). The cash available to the Borrower after taking into account all other anticipated uses of the cash of the Borrower (including the payments on or in respect of debt referred to in paragraph (c) of this Section 6.19), is anticipated to be sufficient to pay all such judgments promptly in accordance with their terms.

Section 6.20. Cash Available. Borrower and its Subsidiaries own cash and cash equivalents (which shall include government bonds, investment grade corporate debt instruments rated A or better, or bank repurchase agreements of 30 days or less duration backed by direct obligations of the United States of America or any agencies thereof) in the aggregate amount of at least \$1,000,000.

ARTICLE 7. AFFIRMATIVE COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower shall:

Section 7.01. Maintenance of Existence. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its corporate existence and good standing in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each of its Subsidiaries to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 7.02. Conduct of Business. Continue, and cause each of its Subsidiaries to continue, to engage in an efficient and economical manner in a business of the same general type as conducted by it on the date of this Agreement.

Section 7.03. Maintenance of Properties. Maintain, keep and preserve, and cause each of its Subsidiaries to maintain, keep and preserve, all of its properties, (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear

excepted.

Section 7.04. Maintenance of Records. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all financial transactions of the Borrower and its Subsidiaries.

Section 7.05. Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof.

Section 7.06. Compliance with Laws. Comply, and cause each of its Subsidiaries to comply, in all respects with all applicable laws, rules, regulations and orders (including, but not limited to, environmental laws, rules, regulations and orders), such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property.

Section 7.07. Right of Inspection. At any reasonable time and from time to time, permit the Agent or any Bank or any agent or representative thereof, to examine and make copies and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any such Subsidiary with any of their respective officers and directors and the Borrower's independent accountants.

Section 7.08. Reporting Requirements. Furnish directly to each of the Banks:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, a consolidated and consolidating balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such fiscal year and a consolidated and consolidating income statement and statements of cash flows and changes in stockholders' equity of the Borrower and its Consolidated Subsidiaries for such fiscal year, all in reasonable detail and stating in comparative form the respective consolidated and consolidating figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP and as to the consolidated statements accompanied by an opinion thereon acceptable to the Agent and each of the Banks by Price Waterhouse or other independent accountants of national standing selected by the Borrower;

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Borrower, a consolidated and consolidating balance sheet of the Borrower and its Consolidated Subsidiaries as of the end of such quarter and a consolidated and consolidating income statement and statements of cash flows and changes in stockholders' equity, of the Borrower and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, all in reasonable detail and stating in comparative form the respective consolidated and consolidating figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP and certified by the chief financial officer of the Borrower (subject to year-end adjustments);

(c) promptly upon receipt thereof, copies of any reports submitted to the Borrower or any of its Subsidiaries by independent certified public accountants in connection with examination of the financial statements of the Borrower or any such Subsidiary made by such accountants;

(d) simultaneously with the delivery of the financial statements referred to above, a certificate of the chief financial officer of the Borrower (i) certifying that to the best of his knowledge no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is

proposed to be taken with respect thereto, and (ii) with computations demonstrating compliance with the covenants contained in Article 9;

(e) simultaneously with the delivery of the annual financial statements referred to in Section 7.08(a), a certificate of the independent public accountants who audited such statements to the effect that, in making the examination necessary for the audit of such statements, they have obtained no knowledge of any condition or event which constitutes a Default or Event of Default, or if such accountants shall have obtained knowledge of any such condition or event, specifying in such certificate each such condition or event of which they have knowledge and the nature and status thereof;

(f) promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Borrower or any of its Subsidiaries which, if determined adversely to the Borrower or such Subsidiary, could have a material adverse effect on the financial condition, properties, or operations of the Borrower or such Subsidiary;

(g) as soon as possible and in any event within 10 days after the occurrence of each Default or Event of Default a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto; (h) as soon as possible, and in any event within ten days after the Borrower knows or has reason to know that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan have occurred or exist, a statement signed by a senior financial officer of the Borrower setting forth details respecting such event or condition and the action, if any, which the Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Borrower or an ERISA Affiliate with respect to such event or condition):

- (i) any reportable event, as defined in Section 4043(b) of ERISA, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code) and any request for a waiver under Section 412(d) of the Code for any Plan;
- (ii) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by the Borrower or an ERISA Affiliate to terminate any Plan;
- (iii) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;
- (iv) the complete or partial withdrawal from a Multiemployer Plan by the Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt of the Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;
- (v) the institution of a proceeding by a fiduciary or any



Multiemployer Plan against the Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days;

(vi) the adoption of an amendment to any Plan that pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA would result in the loss of tax-exempt status of the trust of which such Plan is a part if the Borrower or an ERISA Affiliate fails to timely provide security to the Plan in accordance with the provisions of said Sections;

(vii) any event or circumstance exists which may reasonably be expected to constitute grounds for the Borrower or any ERISA Affiliate to incur liability under Title IV of ERISA or under Sections 412(c)(11) or 412(n) of the Code with respect to any Plan; and

(viii) the Unfunded Benefit Liabilities of one or more Plans increase after the date of this Agreement in an amount which is material in relation to the financial condition of the Borrower and its Subsidiaries, on a consolidated basis; provided, however, that such increase shall not be deemed to be material so long as it does not exceed \$300,000 during any consecutive one year period.

(i) promptly after the request of any Bank, copies of each annual report filed pursuant to Section 104 of ERISA with respect to each Plan (including, to the extent required by Section 104 of ERISA, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information referred to in Section 103) and each annual report filed with respect to each Plan under Section 4065 of ERISA; provided, however, that in the case of a Multiemployer Plan, such annual reports shall be furnished only if they are available to the Borrower or an ERISA Affiliate;

(j) promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Banks pursuant to any other clause of this Section 7.08;

(k) promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which the Borrower or any of its Subsidiaries sends to its stockholders, and copies of all regular, periodic and special reports, and all registration statements which the Borrower or any such Subsidiary files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange;

(l) promptly after the commencement thereof or promptly after the Borrower knows of the commencement or threat thereof, notice of any Forfeiture Proceeding; and

(m) such other information respecting the condition or operations, financial or otherwise, of the Borrower or any of its Subsidiaries as the Agent or any Bank may from time to time reasonably request.

Section 7.09. Guaranties. Cause any Subsidiary hereafter created or acquired to execute and deliver a Guaranty.

#### ARTICLE 8. NEGATIVE COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement, the Borrower shall not:

Section 8.01. Debt. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Debt except:

(a) Debt of the Borrower under this Agreement or the Notes, or under the Credit Agreement - Term Loan Facility and Notes issued pursuant thereto;

(b) Debt described in Schedule II, including renewals, extensions or refinancings thereof, provided that the principal amount thereof does not increase;

(c) Debt of the Borrower subordinated on terms satisfactory to the Banks to the Borrower's obligations under this Agreement and the Notes;

(d) Debt of the Borrower to any such Subsidiary or of any Subsidiary to the Borrower or another such Subsidiary;

(e) accounts payable to trade creditors for goods or services which are not aged more than 180 days from billing date and current operating liabilities (other than for borrowed money) which are not more than 180 days past due, in each case incurred in the ordinary course of business and paid within the specified time, unless contested in good faith and by appropriate proceedings;

(f) Debt in respect of letters of credit issued for the account of the Borrower or any such Subsidiary in an aggregate face amount outstanding at any time of up to \$1,500,000;

(g) Debt of the Borrower or any such Subsidiary secured by purchase money Liens permitted by Section 8.03; or

(h) Debt incurred by Borrower in an amount not to exceed \$1,100,000 to finance the purchase and improvement by Borrower of the former Carl's Drug Company real property located at 5836 Success Drive, West Rome Industrial Park, Rome, New York.

Section 8.02. Guaranties, Etc. Assume, guarantee, endorse or otherwise be or become directly or contingently responsible or liable, or permit any of its Subsidiaries to assume, guarantee, endorse or otherwise be or become directly or indirectly responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods or services or to supply or advance any funds, asset, goods or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth or otherwise to assure the creditors of any Person against loss) for the obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

Section 8.03. Liens. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, except:

(a) Liens in favor of the Agent on behalf of the Banks securing the Loans hereunder;

(b) Liens for taxes or assessments or other government charges or levies if not yet due and payable or if due and payable if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(c) Liens imposed by law, such as mechanic's, materialmen's, landlord's, warehousemen's and carrier's Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than 30 days, or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(d) Liens under workmen's compensation, unemployment insurance, social security or similar legislation (other than ERISA);

(e) Liens, deposits or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases

(permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;

(f) judgment and other similar Liens arising in connection with court proceedings; provided that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(g) easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by the Borrower or any such Subsidiary of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

(h) Liens securing obligations of such a Subsidiary to the Borrower or another such Subsidiary;

(i) Liens described in Schedule II including renewals, extensions or refinancings of the obligations secured thereby, provided that the principal amount does not increase and the Liens are not extended to other property or obligations;

(j) a mortgage granted on the former Carl's Drug Company real property located at 5836 Success Drive, West Rome Industrial Park, Rome, New York to secure the debt referenced in Section 8.01(h); or

(k) purchase money Liens on any property hereafter acquired or the assumption of any Lien on property existing at the time of such acquisition, or a Lien incurred in connection with any conditional sale or other title retention agreement or a Capital Lease; provided that:

- (i) any property subject to any of the foregoing is acquired by the Borrower or any such Subsidiary in the ordinary course of its business and the Lien on any such property is created contemporaneously with such acquisition;
- (ii) the obligation secured by any Lien so created, assumed or existing shall not exceed 100% of the lesser of cost or fair market value as of the time of acquisition of the property covered thereby to the Borrower or such Subsidiary acquiring the same;
- (iii) each such Lien shall attach only to the property so acquired and fixed improvements thereon;
- (iv) the Debt secured by all such Liens shall not exceed \$200,000 at any time outstanding in the aggregate; and
- (v) the obligations secured by such Lien are permitted by the provisions of Section 8.01 and the related expenditure is permitted under Section 9.03.

Section 8.04. Leases. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any obligation as lessee for the rental or hire of any real or personal property, except: (a) leases existing on the date of this Agreement and any extensions or renewals thereof; (b) leases (other than Capital Leases) which do not in the aggregate require the Borrower and its Subsidiaries on a consolidated basis to make payments (including taxes, insurance, maintenance and similar expense which the Borrower or any Subsidiary is required to pay under the terms of any lease) in any fiscal year of the Borrower in excess of \$1,000,000; (c) leases between the Borrower and any such Subsidiary or between any such Subsidiaries; and (d) Capital Leases permitted by Section 8.03. Payments under existing Birtcher Medical Systems, Inc. leases and renewals of same for premises located at 50 Technology Drive and 15330 Barranca Parkway, Irvine, California shall be disregarded in calculating Borrower's compliance with the limitations set forth in subsection 8.04(b).

Section 8.05. Loans; Investments. Make, or permit any of its Subsidiaries to make, any loan or advance to any Person, or purchase or otherwise acquire, or permit any such Subsidiary to purchase or otherwise acquire, any capital stock, assets, obligations or other securities of, make any capital contribution to, or otherwise invest in, or acquire any interest in, any Person, except: (a) direct obligations of the United States of America or any agency thereof with maturities of five years or less from the date of acquisition; (b) commercial paper of a domestic issuer rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (c) certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank operating within the United States of America having capital and surplus in excess of \$750,000,000; (d) bank repurchase agreements of 30 days or less duration backed by direct obligations of the United States of America or any agencies thereof; and (e) for stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing to the Borrower or any such Subsidiary.

Section 8.06. Dividends. Without the consent of the Banks, declare or pay any dividends, purchase, redeem, retire or otherwise acquire for value any of its capital stock now or hereafter outstanding, or make any distribution of assets to its stockholders as such whether in cash, assets or in obligations of the Borrower, or allocate or otherwise set apart any sum for the payment of any dividend or distribution on, or for the purchase, redemption or retirement of any shares of its capital stock, or make any other distribution by reduction of capital or otherwise in respect of any shares of its capital stock or permit any of its Subsidiaries to purchase or otherwise acquire for value any stock of the Borrower or another such Subsidiary, except that: (a) the Borrower may declare and deliver dividends and make distributions payable solely in common stock of the Borrower; and (b) the Borrower may purchase or otherwise acquire shares of its capital stock by exchange for or out of the proceeds received from a substantially concurrent issue of new shares of its capital stock.

Section 8.07. Sale of Assets. Sell, lease, assign, transfer or otherwise dispose of, or permit any of its Subsidiaries to sell, lease, assign, transfer or otherwise dispose of, any of its now owned or hereafter acquired assets (including, without limitation, shares of stock and indebtedness of such Subsidiaries, receivables and leasehold interests); except: (a) for inventory disposed of in the ordinary course of business; (b) the sale or other disposition of assets no longer used or useful in the conduct of its business; (c) that any such Subsidiary may sell, lease, assign, or otherwise transfer its assets to the Borrower; and (d) Borrower may sell, lease, assign or otherwise transfer assets to any Subsidiary so long as a Guaranty is in full force and effect for such Subsidiary.

Section 8.08. Stock of Subsidiaries, Etc. Sell or otherwise dispose of any shares of capital stock of any of its Subsidiaries, except in connection with a transaction permitted under Section 8.10, or permit any such Subsidiary to issue any additional shares of its capital stock, except directors' qualifying shares.

Section 8.09. Transactions with Affiliates. Enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate or permit any of its Subsidiaries to enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 8.10. Mergers, Etc. Merge or consolidate with, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person, or acquire all or substantially all of the assets or the business of any Person (or enter into any agreement to do any of the foregoing), or permit any of its Subsidiaries to do so except that: (a) any such Subsidiary may merge into or transfer assets to the Borrower; and (b) any

Subsidiary may merge into or consolidate with or transfer assets to any other Subsidiary.

Section 8.11. Acquisitions. Enter into any transaction (other than the Birtcher Acquisition and the Target Acquisition) pursuant to which the Borrower or any of its Subsidiaries (a) acquires equity securities (or warrants, options or other rights to acquire such securities) of any corporation other than the Borrower or any corporation which is not then a Subsidiary of the Borrower, pursuant to a solicitation of tenders therefor, or in one or more negotiated block, market or other transactions not involving a tender offer, or a combination of any of the foregoing, or (b) makes any corporation a Subsidiary of the Borrower, or causes any such corporation to be merged into the Borrower or any of its Subsidiaries, in any case pursuant to a merger, purchase of assets or any reorganization providing for the delivery or issuance to the holders of such corporation's then outstanding securities, in exchange for such securities, of cash or securities of the Borrower or any of its Subsidiaries, or a combination thereof, or (c) purchases all or substantially all of the business or assets of any corporation.

Section 8.12. No Activities Leading to Forfeiture. Neither the Borrower nor any of its Subsidiaries or affiliates shall engage in or propose to be engaged in the conduct of any business or activity which could result in a Forfeiture Proceeding.

Section 8.13. New Businesses. Engage in, or permit any Subsidiary to engage in, any business other than those presently conducted.

#### ARTICLE 9. FINANCIAL COVENANTS.

So long as any of the Notes shall remain unpaid or any Bank shall have any Commitment under this Agreement:

Section 9.01. Minimum Working Capital. The Borrower shall maintain at all times an excess of Consolidated Current Assets over Consolidated Current Liabilities of not less than the amounts listed on the following table for the periods stated therein.

	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998
	-----	-----	-----	-----
1st Quarter	\$15,000M	\$21,000M	\$28,000M	\$40,000M
2nd Quarter	\$15,000M	\$22,000M	\$31,000M	-----
3rd Quarter	\$15,000M	\$23,000M	\$34,000M	-----
4th Quarter	\$20,000M	\$25,000M	\$37,000M	-----

For purposes of Sections 9.01 and 9.04 only, Loans under this Agreement shall not be considered as Current Liabilities.

Section 9.02. Minimum Tangible Net Worth. The Borrower shall maintain at all times a Consolidated Tangible Net Worth of not less than the amounts listed on the following table for the periods stated therein.

	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997	Fiscal Year 1998
	-----	-----	-----	-----
1st Quarter	\$ 5,000M	\$21,000M	\$35,000M	\$45,000M
2nd Quarter	\$ 5,000M	\$24,000M	\$38,000M	-----
3rd Quarter	\$ 7,000M	\$27,000M	\$41,000M	-----
4th Quarter	\$18,000M	\$31,000M	\$45,000M	-----

Section 9.03. Leverage Ratio. The Borrower shall maintain at all times a ratio of Consolidated Total Liabilities to Consolidated Tangible Net Worth of not greater than the amounts listed on the following table for these periods stated therein.

	Fiscal Year 1995 -----	Fiscal Year 1996 -----	Fiscal Year 1997 -----	Fiscal Year 1998 -----
1st Quarter	6.00:1.00	2.00:1.00	1.05:1.00	0.95:1.00
2nd Quarter	6.00:1.00	1.70:1.00	0.95:1.00	----
3rd Quarter	4.00:1.00	1.40:1.00	0.95:1.00	----
4th Quarter	2.40:1.00	1.25:1.00	0.95:1.00	----

Section 9.04. Cash Flow Coverage Ratio. The Borrower shall maintain a Cash Flow Coverage Ratio of not less than 1.15:1.00 through June 30, 1995 and 1.25:1.00 thereafter.

Section 9.05. Limitation on Debt. The Borrower shall maintain at all times a ratio of Total Funded Debt to Cash Flow of not more than 4.5:1.00.

ARTICLE 10. EVENTS OF DEFAULT.

Section 10.01. Events of Default. Any of the following events shall be an "Event of Default":

(a) the Borrower shall: (i) fail to pay the principal of any Note under this Agreement or with respect to the Term Loans as and when due and payable; or (ii) fail to pay interest on any Note under this Agreement or with respect to the Revolving Credit Facility Loans or any fee or other amount due hereunder as and when due and payable;

(b) any representation or warranty made or deemed made by the Borrower in this Agreement or in any other Facility Document or by any Third Party in any Facility Document to which it is a party or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with any Facility Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made;

(c) the Borrower shall: (i) fail to perform or observe any term, covenant or agreement contained in Section 2.03 or Articles 7, 8 or 9 or elsewhere in this Agreement; or (ii) fail to perform or observe any term, covenant or agreement on its part to be performed or observed (other than the obligations specifically referred to elsewhere in this Section 10.01) in any Facility Document and such failure shall continue for 30 consecutive days;

(d) the Borrower, any Third Party or any of their respective Subsidiaries shall: (i) fail to pay any indebtedness, including but not limited to indebtedness for borrowed money (other than the payment obligations described in (a) above), of the Borrower, such Third Party or such Subsidiary, as the case may be, or any interest or premium thereon, within 180 days of billing date in the case of trade accounts payable, 180 days from the due date in the case of other current operating liabilities (other than for borrowed money), and within thirty days of the date when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) for all other Debt; or (ii) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or passage of time, or both, the maturity of such indebtedness, whether or not such failure to perform or observe shall be waived by the holder of such indebtedness; or any such indebtedness shall be declared

to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(e) the Borrower, any Third Party or any of their respective Subsidiaries: (i) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding shall have been commenced, against it, in which an adjudication or appointment is made or order for relief is entered, and which petition, application or proceeding remains undismissed for a period of 30 days or more; or shall be the subject of any proceeding under which its assets may be subject to seizure, forfeiture or divestiture (other than a proceeding in respect of a Lien permitted under Section 8.03 (b)); or (v) by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of 30 days or more;

(f) one or more judgments, decrees or orders for the payment of money in excess of \$100,000 in the aggregate shall be rendered against the Borrower, any Third Party or any of their respective Subsidiaries and such judgments, decrees or orders shall continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal;

(g) any event or condition shall occur or exist with respect to any Plan or Multiemployer Plan concerning which the Borrower is under an obligation to furnish a report to the Bank in accordance with Section 7.08(h) hereof and as a result of such event or condition, together with all other such events or conditions, the Borrower or any ERISA Affiliate has incurred or in the opinion of the Bank is reasonably likely to incur a liability to a Plan, a Multiemployer Plan, the PBGC, or a Section 4042 Trustee (or any combination of the foregoing) which is material in relation to the financial position of the Borrower and its Subsidiaries, on a consolidated basis; provided, however, that any such amount shall not be deemed to be material so long as all such amounts do not exceed in the aggregate during any consecutive one year period \$500,000;

(h) The Unfunded Benefit Liabilities of one or more Plans have increased after the date of this Agreement in an amount which is material (as specified in Section 10.01(g) hereof);

(i) (i) any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rules 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 5% or more of the outstanding shares of voting stock of the Borrower unless such persons are qualified to file SEC Schedule 12G under SEC Rules 13d-1(b)(1) and 13d-2(b); or (ii) during any period of 12 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 12-month period were directors of the Borrower cease for any reason to constitute a majority of the board of directors of the Borrower unless such persons are replaced as directors by persons nominated by the then current board of directors;

(j) (A) any Forfeiture Proceeding shall have been commenced or the Borrower shall have given any Bank written notice of the commencement of any Forfeiture Proceeding as provided in Section 7.08(1) or (B) any Bank has a good faith basis to believe that a Forfeiture Proceeding has been threatened or commenced; or

(k) any Guaranty shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the

Guarantor, or the Guarantor shall revoke or terminate its Guaranty with respect to future advances, or shall deny it has any further liability or obligation thereunder, or shall fail to perform its obligations thereunder.

Section 10.02. Remedies. If any Event of Default shall occur and be continuing, the Agent shall, upon request of the Required Banks, by notice to the Borrower, (a) declare the Commitments to be terminated, whereupon the same shall forthwith terminate, and (b) declare the outstanding principal of the Notes, all interest thereon and all other amounts payable under this Agreement and the Notes to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided that, in the case of an Event of Default referred to in Section 10.01(e) or Section 10.01(j)(A) above, the Commitments shall be immediately terminated, and the Notes, all interest thereon and all other amounts payable under this Agreement shall be immediately due and payable without notice, presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower.

#### ARTICLE 11. THE AGENT; RELATIONS AMONG BANKS AND BORROWER.

Section 11.01. Appointment, Powers and Immunities of Agent. Each Bank hereby irrevocably (but subject to removal by the Required Banks pursuant to Section 11.09) appoints and authorizes the Agent to act as its agent hereunder and under any other Facility Document with such powers as are specifically delegated to the Agent by the terms of this Agreement and any other Facility Document, together with such other powers as are reasonably incidental thereto. The Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Facility Document, and shall not be responsible of this Agreement be a trustee for any Bank. The Agent shall not be responsible to the Banks for any recitals, statements, representations or warranties made by the Borrower or any officer or official of the Borrower or any other Person contained in this Agreement or any other Facility Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Facility Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Facility Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any collateral security for the Loans or for any failure by the Borrower to perform any of its obligations hereunder or thereunder. The Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither the Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Facility Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. The Borrower shall pay any fee agreed to by the Borrower and the Agent with respect to the Agent's services hereunder.

Section 11.02. Reliance by Agent. The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Agent. The Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof unless and until a notice of the assignment or transfer thereof satisfactory to the Agent signed by such Bank shall have been furnished to the Agent but the Agent shall not be required to deal with any Person who has acquired a participation in any Loan from a Bank. As to any matters not expressly provided for by this Agreement or any other Facility Document, the Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Banks, and such instructions of the Required Banks and any action taken or failure to act pursuant thereto shall be binding on all of the Banks and any other holder of all or any portion of any Loan.



Section 11.03. Defaults. The Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default (other than the non-payment of principal of or interest on the Loans to the extent the same is required to be paid to the Agent for the account of the Banks) unless the Agent has received notice from a Bank or the Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that the Agent receives such a notice of the occurrence of a Default or Event of Default, the Agent shall give prompt notice thereof to the Banks (and shall give each Bank prompt notice of each such non-payment). The Agent shall (subject to Section 11.08) take such action with respect to such Default or Event of Default which is continuing as shall be directed by the Required Banks; provided that, unless and until the Agent shall have received such directions, the Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Banks; and provided further that the Agent shall not be required to take any such action which it determines to be contrary to law.

Section 11.04. Rights of Agent as a Bank. With respect to its Commitment and the Loans made by it, the Agent in its capacity as a Bank hereunder shall have the same rights and powers hereunder as any other Bank and may exercise the same as though it were not acting as the Agent, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include the Agent in its capacity as a Bank. The Agent and its affiliates may (without having to account therefor to any Bank) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with, the Borrower (and any of its affiliates) as if it were not acting as the Agent, and the Agent may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Banks. Although the Agent and its affiliates may in the course of such relationships and relationships with other Persons acquire information about the Borrower, its Affiliates and such other Persons, the Agent shall have no duty to disclose such information to the Banks.

Section 11.05. Indemnification of Agent. The Banks agree to indemnify the Agent (to the extent not reimbursed under Section 12.03 or under the applicable provisions of any other Facility Document, but without limiting the obligations of the Borrower under Section 12.03 or such provisions), ratably in accordance with the aggregate unpaid principal amount of the Loans made by the Banks (without giving effect to any participations, in all or any portion of such Loans, sold by them to any other Person) (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement, any other Facility Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which the Borrower is obligated to pay under Section 12.03 or under the applicable provisions of any other Facility Document but excluding, unless a Default or Event of Default has occurred, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified.

Section 11.06. Documents. The Agent will forward to each Bank, promptly after the Agent's receipt thereof, a copy of each report, notice or other document required by this Agreement or any other Facility Document to be delivered to the Agent for such Bank.

Section 11.07. Non-Reliance on Agent and Other Banks. Each Bank agrees that it has, independently and without reliance on the Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and its Subsidiaries and decision to enter into this Agreement and that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as

it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Facility Document. The Agent shall not be required to keep itself informed as to the performance or observance by the Borrower of this Agreement or any other Facility Document or any other document referred to or provided for herein or therein or to inspect the properties or books of the Borrower or any Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of the Borrower or any Subsidiary (or any of their Affiliates) which may come into the possession of the Agent or any of its affiliates. The Agent shall not be required to file this Agreement, any other Facility Document or any document or instrument referred to herein or therein, for record or give notice of this Agreement, any other Facility Document or any document or instrument referred to herein or therein, to anyone.

Section 11.08. Failure of Agent to Act. Except for action expressly required of the Agent hereunder, the Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of the Banks under Section 10.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

Section 11.09. Resignation or Removal of Agent. Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by giving written notice thereof to the Banks and the Borrower, and the Agent may be removed at any time with or without cause by the Required Banks; provided that the Borrower and the other Banks shall be promptly notified thereof. Upon any such resignation or removal, the Required Banks shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Banks and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation or the Required Banks' removal of the retiring Agent, then the retiring Agent may, on behalf of the Banks, appoint a successor Agent, which shall be a bank which has an office in New York, New York. The Required Banks or the retiring Agent, as the case may be, shall upon the appointment of a successor Agent promptly so notify the Borrower and the other Banks. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article 11 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent.

Section 11.10. Amendments Concerning Agency Function. The Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Facility Document which affects its duties hereunder or thereunder unless it shall have given its prior consent thereto.

Section 11.11. Liability of Agent. The Agent shall not have any liabilities or responsibilities to the Borrower on account of the failure of any Bank to perform its obligations hereunder or to any Bank on account of the failure of the Borrower to perform its obligations hereunder or under any other Facility Document.

Section 11.12. Transfer of Agency Function. Without the consent of the Borrower or any Bank, the Agent may at any time or from time to time transfer its functions as Agent hereunder to any of its offices wherever located, provided that the Agent shall promptly notify the Borrower and the Banks thereof.

Section 11.13. Non-Receipt of Funds by the Agent. Unless the Agent shall have been notified by a Bank or the Borrower (either one as appropriate being the "Payor") prior to the date on which such Bank is to make payment hereunder to the Agent of the proceeds of a Loan or the Borrower is to make

payment to the Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor does not intend to make the Required Payment to the Agent, the Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient on such date and, if the Payor has not in fact made the Required Payment to the Agent, the recipient of such payment shall, on demand, repay to the Agent the amount made available to it together with interest thereon for the period from the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to the average daily Federal Funds Rate for such period.

Section 11.14. Withholding Taxes. Each Bank represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to the Agent such forms, certifications, statements and other documents as the Agent may request from time to time to evidence such Bank's exemption from the withholding of any tax imposed by any jurisdiction or to enable the Agent to comply with any applicable laws or regulations relating thereto. Without limiting the effect of the foregoing, if any Bank is not created or organized under the laws of the United States of America or any state thereof, in the event that the payment of interest by the Borrower is treated for U.S. income tax purposes as derived in whole or in part from sources from within the U.S., such Bank will furnish to the Agent Form 4224 or Form 1001 of the Internal Revenue Service, or such other forms, certifications, statements or documents, duly executed and completed by such Bank as evidence of such Bank's exemption from the withholding of U.S. tax with respect thereto. The Agent shall not be obligated to make any payments hereunder to such Bank in respect of any Loan or such Bank's Commitment until such Bank shall have furnished to the Agent the requested form, certification, statement or document.

Section 11.15. Several Obligations and Rights of Banks. The failure of any Bank to make any Loan to be made by it on the date specified therefor shall not relieve any other Bank of its obligation to make its Loan on such date, but no Bank shall be responsible for the failure of any other Bank to make a Loan to be made by such other Bank. The amounts payable at any time hereunder to each Bank shall be a separate and independent debt, and each Bank shall be entitled to protect and enforce its rights arising out of this Agreement, and it shall not be necessary for any other Bank to be joined as an additional party in any proceeding for such purpose.

Section 11.16. Pro Rata Treatment of Loans, Etc. Except to the extent otherwise provided: (a) each borrowing under Section 2.04 shall be made from the Banks, pro rata according to the amounts of their respective Commitments; (b) each conversion under Section 2.05 of Loans of a particular type (but not conversions provided for by Section 3.04), shall be made pro rata among the Banks holding Loans of such type according to the respective principal amounts of such Loans by such Banks; and (c) each prepayment and payment of principal of or interest on Loans of a particular type and a particular Interest Period shall be made to the Agent for the account of the Banks holding Loans of such type and Interest Period pro rata in accordance with the respective unpaid principal amounts of such Loans of such Interest Period held by such Banks.

Section 11.17. Sharing of Payments Among Banks. If a Bank shall obtain payment of any principal of or interest on any Loan made by it through the exercise of any right of setoff, banker's lien, counterclaim, or by any other means (including any payment obtained from or charged against any Third Party), it shall promptly purchase from the other Banks participations in (or, if and to the extent specified by such Bank, direct interests in) the Loans made by the other Banks in such amounts, and make such other adjustments from time to time as shall be equitable to the end that all the Banks shall share the benefit of such payment (net of any expenses which may be incurred by such Bank in obtaining or preserving such benefit) pro rata in accordance with the unpaid principal and interest on the Loans, on the Term Loans, and on other Debt to any of the Banks permitted under Section 8.01(b), held by each of them prior to such action. To such end the Banks shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Bank so

purchasing a participation (or direct interest) in the Loans made by other Banks may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation (or direct interest). Nothing contained herein shall require any Bank to exercise any such right or shall affect the right of any Bank to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness of the Borrower.

#### ARTICLE 12. MISCELLANEOUS.

Section 12.01. Amendments and Waivers. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended or modified only by an instrument in writing signed by the Borrower, the Agent and the Required Banks, or by the Borrower and the Agent acting with the consent of the Required Banks and any provision of this Agreement may be waived by the Required Banks or by the Agent acting with the consent of the Required Banks; provided that no amendment, modification or waiver shall, unless by an instrument signed by all of the Banks or by the Agent acting with the consent of all of the Banks: (a) increase or extend the term, or extend the time or waive any requirement for the reduction or termination, of the Commitments, (b) extend the date fixed for the payment of principal, interest or fees on any Loan, (c) reduce the amount of any payment of principal thereof or the rate at which interest is payable thereon or any fee payable hereunder, (d) alter the terms of this Section 12.01, (e) amend the definition of the term "Required Banks" or (f) waive any of the conditions precedent set forth in Article 5 hereof and provided, further, that any amendment of Article 11 hereof or any amendment which increases the obligations of the Agent hereunder shall require the consent of the Agent. No failure on the part of the Agent or any Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 12.02. Usury. Anything herein to the contrary notwithstanding, the obligations of the Borrower under this Agreement and the Notes shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of law applicable to a Bank limiting rates of interest which may be charged or collected by such Bank.

Section 12.03. Expenses. The Borrower shall reimburse the Agent and the Banks on demand for all costs, expenses, and charges (including, without limitation, fees and charges of external legal counsel for the Agent and each Bank and costs allocated by their respective internal legal departments) incurred by the Agent or the Banks in connection with the preparation, performance, or enforcement of this Agreement or the Notes. The Borrower agrees to indemnify the Agent and each Bank and their respective directors, officers, employees and agents from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by the Borrower or any Subsidiary of the proceeds of the Loans, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the negligence or willful misconduct of the Person to be indemnified).

Section 12.04. Survival. The obligations of the Borrower under Sections 3.01, 3.05 and 12.03 shall survive the repayment of the Loans and the termination of the Commitments.

Section 12.05. Assignment; Participations. (a) This Agreement shall be binding upon, and shall inure to the benefit of, the Borrower, the Agent, the Banks and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder. Each Bank may assign, or sell participations in, all or any part of the Loan to another bank or other entity, in which event (i) in the case of an assignment, upon notice

thereof by the Bank to the Borrower with a copy to the Agent, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it were a Bank hereunder; and (ii) in the case of a participation, the participant shall have no rights under the Facility Documents and all amounts payable by the Borrower under Article 3 shall be determined as if such Bank had not sold such participation. The agreement executed by such Bank in favor of the participant shall not give the participant the right to require such Bank to take or omit to take any action hereunder except action directly relating to (i) the extension of a payment date with respect to any portion of the principal, interest or fees on any amount outstanding hereunder allocated to such participant, (ii) the reduction of the principal amount outstanding hereunder, (iii) the reduction of the rate of interest payable on such amount or any amount of fees payable hereunder to a rate or amount, as the case may be, below that which the participant is entitled to receive under its agreement with such Bank, or (iv) the extension of the Final Maturity Date. Such Bank may furnish any information concerning the Borrower in the possession of such Bank from time to time to assignees and participants (including prospective assignees and participants); provided that such Bank shall require any such prospective assignee or such participant (prospective or otherwise) to agree in writing to maintain the confidentiality of such information. In connection with any assignment pursuant to this paragraph (a), the assigning Bank shall pay the Agent an administrative fee for processing such assignment in the amount of \$2,500.

(b) In addition to the assignments and participations permitted under paragraph (a) above, any Bank may assign and pledge all or any portion of its Loans and Note to (i) any affiliate of such Bank or (ii) any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank. No such assignment shall release the assigning Bank from its obligations hereunder.

Section 12.06. Notices. Except as otherwise provided in this Agreement, notices may be given by telecopy, overnight courier, or by regular mail, telecopied or addressed to the intended recipient at its telecopy number or address listed on the signature page of this Agreement. Notices shall be effective: (a) if given by mail, 72 hours after deposit in the mails with first class postage prepaid, addressed as aforesaid; (b) if given by telecopy, when the telecopy is transmitted to the applicable telecopy number; and (c) if sent by overnight courier, upon delivery; provided, however, that notices to the Agent and the Banks shall be effective upon receipt. A party may change its telecopy number or address for receipt of notices by written notice given in accordance with this paragraph.

Section 12.07. JURISDICTION; IMMUNITIES; WAIVER OF RIGHT TO JURY TRIAL. (a) THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE OR UNITED STATES FEDERAL COURT SITTING IN ONONDAGA OR ONEIDA COUNTY OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, OR ANY OTHER FACILITY DOCUMENT, AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT. THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO THE BORROWER AT ITS ADDRESS SPECIFIED IN SECTION 12.07 BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. THE BORROWER FURTHER WAIVES ANY OBJECTION TO VENUE IN SUCH STATE AND ANY OBJECTION TO AN ACTION OR PROCEEDING IN SUCH STATE ON THE BASIS OF FORUM NON CONVENIENS. THE BORROWER AND THE BANKS FURTHER AGREE THAT ANY ACTION OR PROCEEDING BROUGHT AGAINST THE AGENT SHALL BE BROUGHT ONLY IN NEW YORK STATE OR UNITED STATES FEDERAL COURT SITTING IN ONONDAGA COUNTY. THE BORROWER WAIVES ANY RIGHT IT MAY HAVE TO JURY TRIAL.

(b) Nothing in this Section 12.07 shall affect the right of the Agent or any Bank to serve legal process in any other manner permitted by law or affect the right of the Agent or any Bank to bring any action or proceeding against the Borrower or its property in the courts of any other jurisdictions.

(c) To the extent that the Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, the Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the Notes.

Section 12.08. Table of Contents; Headings. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 12.09. Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 12.10. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 12.11. Integration. The Facility Documents set forth the entire agreement among the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 12.12. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 12.13. Confidentiality. Each Bank and the Agent agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with safe and sound banking practices, any non-public information supplied to it by the Borrower pursuant to this Agreement which is identified by the Borrower as being confidential at the time the same is delivered to the Banks or the Agent, provided that nothing herein shall limit the disclosure of any such information (i) to the extent required by statute, rule, regulation or judicial process, (ii) to counsel for any of the Banks or the Agent, (iii) to bank examiners, auditors or accountants, (iv) in connection with any litigation to which any one or more of the Banks is a party or (v) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first executes and delivers to the respective Bank a Confidentiality Agreement in substantially the form of Exhibit C hereto; provided, further, that, unless specifically prohibited by applicable law or court order, each Bank shall, prior to disclosure thereof, notify the Borrower of any request for disclosure of any such non-public information (x) by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Bank by such governmental agency) or (y) pursuant to legal process; and provided finally that in no event shall any Bank or the Agent be obligated or required to return any materials furnished by the Borrower. The obligations of each Bank under this Section 12.13 shall supersede and replace the obligations of such Bank under the confidentiality letter in respect of this financing signed and delivered by such Bank to the Borrower prior to the date hereof.

Section 12.14. Treatment of Certain Information. The Borrower (a) acknowledges that services may be offered or provided to it (in connection with this Agreement or otherwise) by each Bank or by one or more of their respective subsidiaries or affiliates and (b) acknowledges that any information delivered to each Bank or to its subsidiaries or affiliates regarding the Borrower may be shared among the Bank and such subsidiaries and affiliates. This Section 12.14 shall survive the repayment of the loans and the termination of the Commitments.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be

duly executed as of the day and year first above written.

CONMED CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

CONMED CORPORATION  
310 Broad Street  
Utica, New York 13501  
Attn: Eugene R. Corasanti,  
President  
Telecopy: (315) 797-0321

AGENT:

THE CHASE MANHATTAN BANK  
(NATIONAL ASSOCIATION)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

THE CHASE MANHATTAN BANK, N.A.  
P.O. Box 4911  
One Lincoln Center  
Syracuse, New York 13202  
Attn: Frederick K. Miller  
Telecopy: (315) 424-2933

BANKS:

THE CHASE MANHATTAN BANK  
(NATIONAL ASSOCIATION)

By: \_\_\_\_\_

Name: Frederick K. Miller

Title: Vice President

Lending Office and Address for  
Notices:

One Lincoln Center  
Syracuse, New York 13202  
Attn: Frederick K. Miller  
Telecopy: (315) 424-2933

FLEET BANK

By: \_\_\_\_\_

Name: Bruce W. Goodnough  
Title: Vice President

Lending Office and Address for  
Notices:

268 Genesee Street  
Utica, New York 13502  
Attn: Bruce W. Goodnough  
Telecopy: (315) 798-2736