

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
United States Surgical Corporation	04/01/1999
RECEIVING PARTY DATA	
Name:	The Kendall Company LP
Street Address:	15 Hampshire Street
City:	Mansfield
State/Country:	MASSACHUSETTS
Postal Code:	02048
PROPERTY NUMBERS Total: 17	
Property Type	Number
Patent Number:	6024750
Patent Number:	6036667
Patent Number:	6063050
Patent Number:	6280407
Patent Number:	6468286
Patent Number:	6682544
Application Number:	08911205
Application Number:	08911207
Application Number:	09174276
Application Number:	09420640
Application Number:	09521440
Application Number:	09604877
Application Number:	09948014
Application Number:	10241936
Application Number:	10737414

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PATENT  
REEL: 023758 FRAME: 0597

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Application Number:	11305706
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NAME OF SUBMITTER:	David M. Carter
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**Total Attachments: 26**

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CONTRIBUTION AGREEMENT

by and among

UNITED STATES SURGICAL CORPORATION

and

THE KENDALL COMPANY LP

Dated as of April 1, 1999

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U.S. Pat. & Tm. Office  
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# TABLE OF CONTENTS

ARTICLE 1	CONTRIBUTION OF THE ASSETS BY USSC TO THE PARTNERSHIP	1
1 1	Contribution of the Assets	1
1 2	Excluded Assets	3
1.3	Acceptance of Assets; Conveyance Instruments	4
1 4	Assumed Liabilities	4
1.5	Excluded Liabilities	4
ARTICLE 2	INTENTIONALLY OMITTED	5
ARTICLE 3	DELIVERIES	6
3 1	Deliveries by USSC to The Partnership	6
3 2	Governing USSC Documents	6
3 3	Acceptance of Contribution to The Partnership	6
3 5	Governing Corporation Documents	6
3 6	Effect of Contributions to the Partnership	6
ARTICLE 4	REPRESENTATIONS AND WARRANTIES OF USSC TO THE PARTNERSHIP.	7
4 1	Organization	7
4.2	Qualification	7
4 3	Authority	7
4 4	No Violations	7
4.5	Financial Statements	8
4 6	Absence of Certain Changes or Events	8
4 7	Certain Tax Matters	9
4 8	Condition of Facilities	9
4.9	Utilities; Access	9
4 10	Certain Conditions Not Present	9
4.11	Condition of Equipment.	10
4.12	Inventory; Receivables	10
4.13	Title to Properties; Encumbrances	10
4 14	Leases	10
4 15	Patents, Trademarks, and Similar Rights	11
4 16	Insurance	11
4 17	Documents	11

03/30/99 9:43 AM

4 18	Labor Matters	11
4 19	No Breach	12
4 20	Consents, Permits, Etc	12
4 21	Litigation	12
4 22	Compliance with Applicable Law; Adverse Restrictions	12
4 23	Environmental Protection	12
4 24	Assets Necessary to the Business	13
4 25	Customers, Distributors and Suppliers	13
4 26	Brokers	13
4 27	Governmental Approvals and Consents	13
ARTICLE 5	INTENTIONALLY OMITTED	13
ARTICLE 6	COVENANTS OF THE PARTIES	14
6 1	Consents, Permits, Etc	14
ARTICLE 7	SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION	15
7.1	Survival; Indemnification	15
7.2	Limitations of Indemnification	15
7.3	Tax Indemnification With Respect to Tax Liability of USSC and Other Tax Matters	15
7.4	Definitions	17
7.5	Control of Litigation	17
7.6	Transfer Taxes	18
7.7	Cooperation on Tax Matters	18
7.8	Tax Clearance Certificate	19
ARTICLE 8	MISCELLANEOUS PROVISIONS	19
8.1	Knowledge	19
8.2	Amendment and Modification	19
8.3	Waiver of Compliance; Consents	19
8.4	Assignment	19
8.5	Expenses, Transfer Taxes, Etc	19
8.6	Further Assurances	19
8.7	Governing Law	20
8.8	Counterparts	20

8 9	Publicity	20
8.10	Notices	20
8 11	Specific Performance	20
8.12	Headings	21
8 13	Entire Agreement	21
8.14	Severability	21
8 15	Schedules	21

## CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "Agreement") is entered into by and between United States Surgical Corporation, a Delaware Corporation ("USSC"), and The Kendall Company Limited Partnership, a Delaware Limited Partnership (the "Partnership") as of this 1st day of April, 1999 (the "Contribution Date")

### RECITALS

1 USSC conducts a business involving the research, design, manufacture, and sale of medical and surgical products (excluding the businesses conducted by the operating divisions, or relating to the technologies, described in Schedule 1 2 hereto, the "Business")

2 USSC wishes to contribute the Business (except the "Excluded Assets," as defined in Section 1 2 of this Agreement) as a capital contribution to the Partnership in exchange for a limited partnership interest in the Partnership as described in the Agreement of Limited Partnership of the Partnership (the "Partnership Agreement")

In consideration of the foregoing and the mutual representations, warranties, covenants, and agreements herein contained, the parties agree as follows:

### ARTICLE 1

#### CONTRIBUTION OF THE ASSETS BY USSC TO THE PARTNERSHIP

##### 1.1 Contribution of the Assets

(a) Subject to the terms and conditions of this Agreement, USSC hereby assigns, transfers, and delivers to the Partnership, free and clear of all title defects, objections, liens, pledges, claims, rights of first refusal, options, charges, security interests, mortgages, or other encumbrances of any nature whatsoever (collectively, "Encumbrances") other than "Permitted Encumbrances" (as defined in Section 1 1(b) of this Agreement), all of the assets, properties, and business (excepting only the "Excluded Assets," as defined in Section 1.2 of this Agreement) of every kind and description; wherever located; real, personal, or mixed; tangible or intangible; owned or held; or used primarily in the conduct of the Business as the same shall exist on the Contribution Date (collectively, the "Assets"), and including, without limitation, all right, title, and interest of USSC in, to, and under:

(i) All machinery, equipment, furniture, vehicles and other tangible property (including, without limitation, maintenance and operating supplies, fuel, and spare parts for such machinery and equipment) of USSC (collectively, the "Equipment");

(ii) All raw materials, finished goods, work-in-process, supplies and inventories of USSC (collectively, the "Inventory");

(iii) Those patents, copyrights, trademarks, trade names, technology, know-how, processes, trade secrets, inventions, proprietary data, formulae, research and development data, computer software programs and other intangible property (excluding the "US Surgical" name and any derivative thereof), and any applications for the same,

03/30/99 9:43 AM

used primarily in the Business, and all goodwill associated with such intangible property (collectively, the "Intangible Property");

(iv) All the leases of certain property of USSC, together with all fixtures, office equipment, furnishings, furniture, and other tangible property located thereon, subject to the consent of any party on which the transfer of such leases or other property is conditioned (collectively, the "Leased Property");

(v) All of USSC's rights, claims, credits, causes of action or right of setoff against third parties relating to the Assets, including, without limitation, unliquidated rights under manufacturers' and vendors' warranties but excluding all amounts representing reimbursements for items paid by USSC (collectively, "Claims");

(vi) Those contracts, agreements, leases, licenses and other instruments, arrangements and commitments being assumed by the Partnership with respect to the Assets pursuant to Section 1.4 of this Agreement, subject to the consent of any party on which the assumption is conditioned (collectively, "Rights");

(vii) All certificates of occupancy and other transferable licenses, permits, registrations, authorizations, use agreements, orders or approvals of governmental or quasi-governmental agencies and authorities (whether federal, state, local, municipal or foreign) or private parties relating to the construction, use, operation or enjoyment of the Assets (collectively, "Permits");

(viii) All accounts receivables arising out of sales of inventory or otherwise in the ordinary and usual course of the operation of the Business prior to the close of the Business on the Contribution Date (collectively, "Receivables");

(ix) All transferable bonds or deposits made by USSC or its predecessors in title (or its agents) with any governmental agency or authority or with any utility company or third party relating to the construction, use, operation or enjoyment of the Assets;

(x) All prepaid rentals and other prepaid expenses arising from payments made by USSC in the ordinary and usual course of the operation of the Business related to the Assets prior to the close of the Business on the Contribution Date for goods or services;

(xi) Originals or copies of all books, records, files and papers, whether in hard copy or computer format, used in the Business, including without limitation, engineering information, manuals and data, sales and advertising materials, sales and purchase correspondence, lists of present and former suppliers and personnel and employment records and, with respect to information relating to "Tax" (as defined in Section 7.4(f) of this Agreement), any information that is necessary for the preparation of any Tax returns to be filed after the Contribution Date or the determination of the Tax basis of the Assets (collectively, "Files and Records"); and

(xii) All lists of present, and, to the extent available, future customers and goodwill associated with the Assets



(b) For purposes of this Agreement, "Permitted Encumbrances" shall mean (i) the "Assumed Liabilities," as defined in Section 1.4 of this Agreement; (ii) Encumbrances reflected on the Contribution Date Balance Sheet as defined in Section 4.5 of this Agreement; (iii) liens for current "Taxes" (as defined in Section 7.4 of this Agreement) not yet due or payable without penalty; (iv) Encumbrances which, individually or in the aggregate, do not or would not have a material adverse effect on the Business or financial condition of the Business taken as a whole or materially interfere with the present use of any Assets subject thereto; and (v) easements, rights-of-way, building or use restrictions, exceptions, variances, reservations, or similar Encumbrances of record affecting, but not materially interfering with the present use of, any Subject Property

## 1.2 Excluded Assets

(a) The Corporation expressly understands and agrees that there shall be excluded from the Assets any assets not used in connection with the Business and the following assets and properties of USSC which are used in connection with the Business:

(i) All assets related to the divisions or technologies described in Schedule 1.2 hereto (collectively, the "Excluded Operations");

(ii) All parcels of land described owned by USSC (the "Excluded Fee Property") and the buildings, fixtures, and improvements erected on the Excluded Fee Property (collectively, "Excluded Improvements") (the Excluded Fee Property and Excluded Improvements hereinafter sometimes collectively referred to as the "Excluded Facilities");

(iii) All of USSC's claims against third parties relating to the "Excluded Assets," and the related unliquidated rights under manufacturers' and vendors' warranties, including all amounts representing reimbursements for items paid by it;

(iv) All of USSC's right, title, and interest in and to all Permits relating to the construction, use, operation, or enjoyment of the Excluded Assets;

(v) All of USSC's right, title, and interest in and to all transferable bonds or deposits made by it or its predecessors in title (or its agents) with any governmental agency or authority or with any utility company or third party relating to the construction, use, operation, or enjoyment of the Excluded Assets;

(vi) All of USSC's right, title, and interest in and to all prepaid rentals and other prepaid expenses arising from payments made by USSC in the ordinary and usual course of the operation of the Business in connection with the Excluded Assets;

(vii) Any Assets sold or otherwise disposed of in the ordinary course of the operation of the Business and not in violation of any provisions of this Agreement during the period from December 31, 1998 until the Contribution Date;

(viii) Stock in any Affiliate; and

(ix) Any and all patents and patent applications relating to any pending

litigation involving USSC

(b) The Excluded Operations, Excluded Facilities, Excluded Equipment, Excluded Intangible Property, and all of the rights, properties, and other assets with respect to the Business not being contributed to the Corporation by USSC pursuant to this Agreement are herein collectively referred to as the "Excluded Assets "

**1.3 Acceptance of Assets; Conveyance Instruments** The Partnership hereby accepts the contribution of Assets from USSC In order to effectuate the contribution of the Assets as contemplated by this Article, USSC has, or will hereafter, execute and deliver, or cause to be executed and delivered, all such additional documents or instruments of assignment, transfer or conveyance in addition to this Agreement, in each case dated as of the Contribution Date (collectively, the "Conveyance Instruments"), as the parties and their respective counsel shall reasonably deem necessary or appropriate to vest in or confirm title to the Assets to the Partnership

**1.4 Assumed Liabilities** Subject to the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of the parties contained herein, the Partnership hereby assumes and agrees to pay, discharge, or fulfill all liabilities and obligations relating to the Business, including all of the liabilities and obligations in respect of the contracts, agreements, licenses, and other instruments, arrangements, and commitments of USSC and the leasehold obligations, including by assignment or sublease, in respect of the Leased Property of USSC, to the extent that the Partnership may assume such liabilities and obligations without causing any recognition of gain for federal or state tax purposes to any person under the principles of Code Sections 357, 707, 731 or 752 (collectively, the "Assumed Liabilities")

**1.5 Excluded Liabilities.** Notwithstanding any provision of this Agreement or any Conveyance Instrument to the contrary, the Partnership does not agree to assume any liability or obligations of USSC set forth below and such liabilities and obligations shall be retained by and remain liabilities of USSC and shall not be Assumed Liabilities (all of such liabilities and obligations not being assumed hereinafter referred to as the "Excluded Liabilities");

(a) Any liability for "Tax" (as defined in Section 7 4 of this Agreement) arising from or with respect to the Assets or the operations of the Business, other than described in Section 1.5(b) hereof, which is incurred in or attributable to the "Tax Indemnification Period" (as defined in Section 7 4 of this Agreement) (the "Excluded Tax Liabilities");

(b) Any liability for Tax imposed on or payable by USSC which is incurred in or attributable to the Tax Indemnification Period except to the extent reflected in the "Contribution Date Balance Sheet" of USSC dated as of December 31, 1998 (as defined in Section 4 5 of this Agreement), provided that, in the event that any "Indemnitee" (as defined in Section 7 4 of this Agreement) incurs a "Tax Loss" (as defined in Section 7 3(a) of this Agreement) in respect of any item which gave rise to any amount included in the provision or reserve for deferred income taxes set forth on the Contribution Date Balance Sheet, such Indemnitee shall be entitled to an indemnification from USSC as described in Section 7 3(a) of this Agreement;

(c) Any long-term debt of USSC not specifically assumed; or

- 4 -

03/30/99 9:43 AM

(d) Any liabilities relating to the Excluded Assets (it being understood that any Tax Liability relating to the Excluded Assets shall be an Excluded Tax Liability for purposes of this Agreement)

## ARTICLE 2

### INTENTIONALLY OMITTED

## ARTICLE 3

### DELIVERIES

3.1 **Deliveries by USSC to The Partnership** USSC will deliver to the Partnership with effect from the Contribution Date, the following:

(a) The Conveyance Instruments to effect the contribution of the Assets to, and the assumption of the Assumed Liabilities by, the Partnership, pursuant to Section 1.3 above;

(b) All other previously undelivered items required to be delivered by USSC to the Partnership at or prior to the Contribution Date pursuant to the terms of this Agreement.

3.2 **Governing USSC Documents.** USSC will deliver, or make available for review by the Partnership, the Certificate of Incorporation and Bylaws of USSC

3.3 **Acceptance of Contribution to The Partnership.** In exchange for its Contribution of the Assets as described in Section 1.1, the Partnership will accept the contribution to capital of the Partnership

3.4 **Effect of Contributions to the Partnership** In exchange for Contributions of the Assets as described in Section 1.1, the Partnership has issued USSC the Partnership Interest described in the Partnership Agreement.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF USSC TO THE PARTNERSHIP

USSC hereby represents and warrants to the Partnership as follows:

4.1 **Organization** USSC is a corporation which is duly organized, validly existing, and in good standing under the laws of the state of Delaware, with the corporate powers and authority to own, lease, and operate properties and to carry on its business as now being conducted

4.2 **Qualification** USSC (with respect to the Business only) is licensed or qualified to do business as a foreign corporation and is in good standing to the extent required by law in the jurisdictions in which it conducts its business (except where the failure to so qualify would not have a material adverse effect on the business or financial condition of the Business taken as a whole) (the "Material Jurisdictions").

4.3 **Authority.** USSC has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery by USSC of this Agreement and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by the Board of Directors and shareholders of USSC; no other corporate proceedings on the part of USSC, or any other person or entity, whether pursuant to the Certificates of Incorporation or Bylaws of USSC or by law or otherwise, are necessary to authorize USSC to enter into this Agreement or to consummate the transactions contemplated hereby and thereby; and this Agreement is the legal, valid, and binding obligation of USSC.

4.4 **No Violations.** The execution or delivery of this Agreement, and the consummation of the transactions contemplated hereby or thereby will not:

(a) Require any material filing or registration with, or consent, authorization, approval, or Permit of, any governmental or regulatory authority on the part of USSC;

(b) Violate (i) any material order, writ, injunction, judgment, decree, or award of any court or governmental or regulatory authority or (ii) to the knowledge of USSC, violate or will violate any "Law," as defined in Section 4.22 of this Agreement, of any governmental or regulatory authority to which USSC or any of their respective properties or assets are subject;

(c) Violate or conflict with any provision of, or constitute a default under, the Certificate of Incorporation or Bylaws of USSC; or

(d) (i) violate or breach or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to a right to terminate, any material mortgage, contract, agreement, deed of trust, license, lease, or other instrument, arrangement, commitment, obligation, understanding, or restriction of any kind to which USSC (with respect to the Business only) is a party or by which its properties may be bound, or (ii) will cause, or give any person grounds to cause, to be accelerated (with notice or lapse of time or both) the maturity of, or will increase, any liability or obligation of USSC which violation, breach, default, liability, or obligation, individually or in the aggregate, is or would be material to the business or financial condition of USSC or the Business taken as a whole.

4.5 **Financial Statements.** USSC has heretofore delivered or will deliver to the Partnership, a pro forma balance sheet for the Business (excluding certain assets that are not included in the transactions contemplated by this Agreement) as of December 31, 1998 (the "Contribution Date Balance Sheet"), prepared in conformity with accounting principles consistently applied and fairly presenting the financial condition and results of operations of the Business for the periods and as of the dates stated therein.

4.6 **Absence of Certain Changes or Events.** Since December 31, 1998 (the "Balance Sheet Date"), USSC has operated the Business in the ordinary course consistent with past practice, and neither USSC nor the Business taken as a whole have:

(a) Suffered any material adverse change in its business or any event or condition of any character, which, individually or in the aggregate, has had or might reasonably be expected to have a material adverse effect on the business or financial condition of the Business taken as a whole;

(b) Incurred any obligations or liabilities (absolute, accrued, contingent, or otherwise) or entered into any transactions, other than in the ordinary course of business;

(c) Paid, discharged, or satisfied any claims, obligations, or liabilities (absolute, accrued, contingent, or otherwise), except the payment, discharge, or satisfaction in the ordinary course of business and consistent with past practice of any claims, obligations, and liabilities (i) which are reflected or reserved against in the Contribution Date Balance Sheet or (ii) which were incurred in the ordinary course of business and consistent with past practice since the Balance Sheet Date;

(d) Permitted or allowed any of its properties or assets to be subjected to any Encumbrances or other liabilities and obligations, except (i) in the ordinary course of business and (ii) Permitted Encumbrances;

(e) Sold, conveyed, or otherwise disposed of any properties or assets, except for fair consideration in the ordinary course of business and consistent with past practice;

(f) Disposed of or permitted to lapse any item of Intangible Property, or any license, Permit, or other form of authorization to use any Intangible Property;

(g) Except for normal increases consistent with past practice, instituted any new benefit programs for its Employees;

(h) Made any capital expenditure, or commitment for a capital expenditure, for additions to property, plant, equipment, or Intangible Property, other than in the ordinary course of business;

(i) Made any change in any method of accounting or accounting practice or in any Tax procedures or elections; or

(j) Agreed, whether in writing or otherwise, or made any arrangement, whether or not legally binding, to take any action which, if taken prior to the date hereof, would have been required to be disclosed on a Schedule to clauses (a)-(i) of this Section 4 6

#### 4.7 Certain Tax Matters

(a) USSC:

(i) Has filed or will file or furnish when due in accordance with all applicable laws all Tax returns, statements, reports, and forms (including information returns and reports) required to be filed or furnished with respect to the Business or the Assets with respect to any Pre-Contribution Tax Period as defined in Section 7 4 (collectively, the "Returns");

(ii) Is not subject to any material liens for Taxes on its assets other than liens for taxes which are not yet due or which are payable without penalty;

(iii) Is not subject to any (A) claims, audits, actions, suits, proceedings, or investigations with respect to any Tax or assessment for which USSC could be liable,

which would be material to the Business, to the knowledge of the directors or officers of USSC, and (B) requests for rulings in respect of any Tax on their business or any proposed transaction pending before any Taxing Authority

(b) None of the directors or officers of USSC is aware of any state of facts which could give rise to any claim, audit, action, suit, proceeding, or investigation with respect to any Tax or assessment for which USSC could be liable and which would be material to the Business or the Assets.

**4.8 Condition of Facilities** The manufacturing and other facilities included in the Assets or owned by USSC are in adequate working order for the continued conduct of the Business as it is presently conducted

**4.9 Utilities; Access** The manufacturing and other facilities included in the Assets have water supply, storm and sanitary sewer facilities, access to telephone, gas, and electrical connections, fire protection, drainage, means of ingress and egress to and from public highways and, without limitation, other public utilities, all of which are adequate for the continued conduct of the Business as it is presently conducted

**4.10 Certain Conditions Not Present**

(a) To the knowledge of USSC, there are no liabilities of the Business of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable, or otherwise, and there is no existing condition, situation, or set of circumstances which could reasonably be expected to result in such liabilities which in the aggregate are material to the Business taken as a whole, other than:

(i) Liabilities disclosed or provided for in the Contribution Date Balance Sheet; and

(ii) Liabilities incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date

(b) USSC has not received notice of any pending, and has no knowledge of any threatened or proposed, proceedings or governmental actions to modify the zoning classification of, or to condemn, expropriate, or otherwise take, or to purchase in lieu thereof, all or any material part of any Subject Property

(c) USSC has not received notice of any pending, and has no knowledge of any threatened or proposed, reassessments or special assessments or penalties or interest with respect to real estate taxes applicable to any Subject Property which could, in the reasonable judgment of USSC, have any material adverse effect on the business or financial condition of the Business taken as a whole

**4.11 Condition of Equipment.** The machinery, equipment, furniture, vehicles, and other tangible personal property of USSC, which are included in the Assets are in adequate operating condition for the continued conduct of the Business as they are presently conducted.

**4.12 Inventory; Receivables** Substantially all items of Inventory of USSC are of a good and merchantable quality, usable and saleable in the ordinary course of business. The inventory set forth on the Contribution Date Balance Sheet for USSC is stated properly therein at the lower of cost or realizable market value, determined in accordance with accounting principles consistently applied. The quantities of all items of Inventory are reasonable and warranted in the present circumstances of the Business.

**4.13 Title to Properties; Encumbrances.** Except as set forth in the Financial Statements or in the Schedules hereto, USSC has good and marketable title to each piece of Fee Property and to the Improvements thereon, in each case free and clear of all Encumbrances, except for Permitted Encumbrances, and have title to all of the other tangible Properties, free and clear of all Encumbrances, except for Permitted Encumbrances. As a result of the delivery to the Partnership of the Conveyance Instruments, all of the Assets are owned free and clear of all Encumbrances, except Permitted Encumbrances and encumbrances created by the Partnership (whether or not arising from the transactions contemplated hereby).

**4.14 Leases** Each lease pursuant to which USSC leases real or personal property is in full force and effect in accordance with its terms, no Lease has been modified or amended in writing, and USSC has not received any written notice of any breach or default with respect to a Lease the consequences of which would result in such Lease being terminated by the Lessor or which, individually or in the aggregate, would have a material adverse effect on the business or financial condition of the Business taken as a whole.

**4.15 Patents, Trademarks, and Similar Rights**

(a) USSC has the right to use the Intangible Property which is used in the Business and the consummation of the transactions contemplated by this Agreement will not alter or impair any such rights and will result in the Partnership having the right to use such Intangible Property to the same extent it is currently used in the Business;

(b) No claims have been asserted by any person or entity for the use of any such Intangible Property or challenging or questioning the validity or effectiveness of any such license or agreement, and USSC has no knowledge of any valid basis for any such claim, which claims could, in the judgment of USSC, have a material adverse effect on the Business taken as a whole; and

(c) To the knowledge of USSC, the use of such Intangible Property by USSC does not infringe on the rights of any person or entity.

**4.16 Insurance** USSC has heretofore made available for inspection by the Corporation a true and complete copy of all material policies of fire, liability, workers' compensation, and other forms of insurance owned or held by USSC. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Contribution Date have been paid, and no written notice of cancellation or termination has been received with respect to any such policy. Such policies are in such amounts and insure against such losses and risks and provide such coverage as, in the opinion of USSC, are adequate to protect the Business as they are presently conducted.

**4.17 Documents** USSC has heretofore delivered or made available to the Partnership, to the extent requested by the Partnership, the following documents, each of which is true and complete:

(a) Copies of all material contracts, agreements, or other commitments, written or oral, to which USSC (with respect to the Business only) is a party or has succeeded to a party by assumption or assignment or in which they have a beneficial interest (any contract or agreement shall, for the purposes of this Agreement, be deemed material (A) if the Business taken as a whole is substantially dependent upon it, (B) if it involves a financial obligation of or benefit to the Business in excess of \$250,000, (C) if the contract is not made in the ordinary course of business, or (D) if it constitutes a management contract or employment contract (excluding oral agreements that arise by operation of law)); and

(b) Copies of all product bulletins, technical bulletins, or other advertising or sales materials currently used in connection with the Business

**4.18 Labor Matters.**

(a) To the knowledge of USSC, USSC (with respect to the employees of the Business) is operating in material compliance with all applicable law respecting employment and employment practices, terms and conditions of employment and wages and hours, and are not engaged in any unfair labor practices

(b) To the knowledge of USSC, there are no unfair labor practice complaints, labor disputes, work stoppages, or union organization efforts, or threats of the foregoing, directed against any of the operations of the Business

**4.19 No Breach**

(a) Each material Permit, contract, agreement, deed of trust, lease, policy, license, plan, commitment, arrangement, and understanding (whether evidenced by a written document or otherwise) referred to in this Agreement or in any Schedule hereto, under which USSC has any right, interest, or obligation are in full force and effect

(b) USSC is not in breach of any material agreement of USSC (with respect to the Business) and there does not exist any default or event (including the execution and delivery of this Agreement and no consummation of the transactions contemplated hereby or thereby) which, with the giving of notice or the lapse of time or both, would become a breach or default, and there is no basis for any valid claim of a default in any respect, under any thereof, and USSC has used, or, hereafter shall use its best efforts to secure the consents (where such consents are necessary) of the other parties thereto to the consummation of the transactions contemplated by this Agreement

**4.20 Consents, Permits, Etc.** No material consent, approval, governmental filing, authorization, or Permit from any person or entity is necessary to the consummation of the transactions contemplated by this Agreement

**4.21 Litigation** Except as set forth on Schedule 4.21 hereto, there are no actions pending or threatened by or against, or involving USSC (with respect to the Business only) or



any directors, officers, or employees thereof in their capacity as such or which question or challenge the validity of this Agreement, or any action taken or to be taken by USSC pursuant to this Agreement in connection with the transactions contemplated hereby or thereby, and to the knowledge of USSC, there is no valid basis for any such Action

**4.22 Compliance with Applicable Law; Adverse Restrictions** The operations of USSC (with respect to the Business only) are being conducted in material compliance with (a) all applicable Permits, orders, writs, injunctions, judgments, decrees, or awards of all courts and governmental and regulatory authorities, and (b) to the knowledge of USSC, all material laws (statutory or otherwise), ordinances, rules, regulations, bylaws, and codes of all governmental and regulatory authorities, whether federal, state, or local (individually, a "Law" and collectively, "Laws"), which are applicable to the Assets of the Business (including, without limitation, those related to public or occupational safety, pollution and protection of the environment, and hazardous or other waste disposal) USSC (with respect to the Business) has not received any written notification of any asserted present failure to comply with any Law, except for failures which in the aggregate are not and were not material to the conduct of the Business as a whole or which USSC has taken steps to correct or contest in good faith

**4.23 Environmental Protection** To the knowledge of USSC, USSC (with respect to the Business) has obtained all material Permits relating to pollution or protection of health, safety, or the environment which are required by Law ("Environmental Permits"), including, without limitation, those regulating emissions, discharges, or releases of Hazardous Substances (as defined in CERCLA, as amended by SARA "Hazardous Waste," and "Regulated Substances" as defined by CERCLA) into ambient air, surface water, groundwater, or land, or resulting treatment, storage, or disposal of Hazardous Substances USSC is materially in compliance with such required Environmental Permits and is also in compliance with all other material limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in any Laws or contained in any code, order, decree, or judgment issued, entered, promulgated, or approved thereunder

**4.24 Assets Necessary to Business** As a result of the transactions effected hereby, the Partnership (with respect to the Assets owned prior to the Contribution Date by USSC) (a) will have title to, or a valid leasehold interest in, all material tangible and intangible assets and properties relating to the Business; (b) will possess all material consents, authorizations, approvals, and Permits relating to the Business; and (c) will be party to all material agreements necessary to continue to carry on the Business substantially as presently conducted

**4.25 Customers, Distributors and Suppliers** Since December 31, 1998, USSC has not received written notice of any adverse change in the business relationship of USSC with any customer, distributor or supplier which would be material to the business or financial condition of the Business taken as a whole

**4.26 Brokers** USSC has neither incurred nor will incur any broker's, finder's, investment banking, or similar fee in connection with the transactions contemplated by this Agreement and USSC has not made any statement or representation that could form the basis for any claim for any such fee

4.27 **Governmental Approvals and Consents** Except as referred to in Section 7.8, no approval, authorization, consent, or other order or action of USSC with any court, administrative agency, or other governmental authority is required for the execution and delivery of this Agreement or the consummation by USSC of the transactions contemplated hereby

## ARTICLE 5

### INTENTIONALLY OMITTED

## ARTICLE 6

### COVENANTS OF THE PARTIES

#### 6.1 Consents, Permits, Etc.

(a) USSC has obtained or will use commercially reasonable efforts to obtain at the earliest practicable date hereafter all consents, approvals, governmental filings, authorizations, and Permits necessary to (A) the consummation of the transactions contemplated by this Agreement, and (B) the continued conduct of the Business by the Partnership after the Contribution Date as it is presently conducted and delivers herewith or will deliver when obtained hereafter to the Partnership, as applicable, copies of each such consent, approval, governmental filing, authorization, and Permit.

(b) To the extent that any of the contracts, leases, agreements, Permits, plans, commitments, purchase orders, or other binding arrangements relating to the Assets (in this Section 6.1(b) called "Agreements") cannot be assumed by or assigned to the Partnership without the consent of another party, and such consent has not been obtained as of the Contribution Date, USSC agrees to cooperate in any reasonable arrangement designed to enable USSC to perform its obligations under, and to provide for the Partnership the benefit of, any such agreements, including enforcement at any cost, and for the account of the Partnership, of any and all rights of USSC against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise USSC will promptly pay to the Partnership when received all monies received under any such agreements.

## ARTICLE 7

### SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION

#### 7.1 Survival; Indemnification

(a) The covenants, agreements, representations, and warranties of the parties hereto contained herein or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Contribution Date until January 1, 2000 except that such covenants, agreements, representations, or warranties relating to the Tax matters shall extend until the expiration of the applicable statutory period of limitations (giving effect to any waiver or extension thereof). Notwithstanding the preceding sentence, any covenant, agreement, representation, or warranty in respect of which indemnity may be sought under this Article 7 shall survive the time at which it would otherwise terminate pursuant to such sentence, if notice

of the inaccuracy or breach thereof giving rise to such indemnity shall have been given to the party against whom such indemnity may be sought, prior to such time.

(b) Each of the Indemnitors hereby agrees to indemnify each Indemnitee (as each is defined in Section 7.4 of this Agreement) against and agree to hold it harmless from any and all damage, loss, liability, and expense (including, without limitation, reasonable expenses of investigation and attorney's fees and expenses in connection with any action, suit, proceeding, claim, investigation, or other loss) (a "Loss") incurred or suffered by such Indemnitee arising out of any material breach of any representation or warranty hereunder made by such Indemnitor and from any other breach by such Indemnitor of the provisions of this Agreement.

**7.2 Limitations of Indemnification.** Notwithstanding anything contained in this Section 7 to the contrary, any Indemnitor shall be required to indemnify the Indemnitee against and hold the Indemnitee harmless from all Loss (other than relating to Taxes) with respect to Section 7.1 only to the extent that the aggregate amount of all such Losses exceeds Two Million Dollars (\$2,000,000) (the "Liability Threshold"). In the event that the aggregate amount of all Loss (other than relating to Taxes) with respect to Section 7.1 of this Agreement sustained by the Indemnitee exceeds the Liability Threshold, and the Indemnitor is required to indemnify such Indemnitees, the Indemnitor shall be responsible for payment for all Loss with respect to Section 7.1 of this Agreement in excess of the Liability Threshold; provided, however that in no event shall the amount of Loss (other than relating to Taxes) with respect to Section 7.1 of this Agreement payable by an Indemnitor exceed in the aggregate Fifty Million Dollars (\$50,000,000).

**7.3 Tax Indemnification With Respect to Tax Liability of USSC and Other Tax Matters**

(a) Except to the extent such Taxes are set forth in the Balance Sheet of USSC dated as of December 31, 1998, USSC shall indemnify and hold harmless the Partnership from:

(i) Any liability for Tax of USSC which is incurred in or attributable to the Tax Indemnification Period; and

(ii) Any liability, cost, expense (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses), loss, damages, assessment, settlement, or judgment arising out of or incident to the imposition, assessment, or assertion of any liability described in subclauses (i) and (ii) hereof, including those incurred in the contest in good faith of appropriate proceedings for the imposition, assessment, or assertion of any tax (subject to the provisions of Section 7.3(e) hereof), and any liability of an Indemnitee by reason of being a transferee of the assets of USSC with respect to any liability for Tax of USSC which is incurred or attributable to the Tax Indemnification Period.

The sum of (i) and (ii) above is referred to herein as a "Tax Loss."

(b) In the case of any Taxes that are imposed, assessed, or asserted on a periodic basis and are payable for a Taxable period that includes (but does not end on) the Contribution Date, the portion of such Taxes related to the portion of such Taxable period ending on the Contribution Date and the portion of such Taxes that is incurred in or attributable to the

Pre-Contribution Tax Period shall (i) in the case of any Tax other than a Tax imposed on, measured by, or related to revenues, gross or net income, receipts, gains, or compensation, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction, the numerator of which is the number of days in the Pre-Contribution Tax Period and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any Tax imposed on, measured by, or related to revenues, gross or net income, receipts, gains, or compensation, be deemed equal to the amount of such Tax for the entire Taxable period multiplied by a fraction, the numerator of which is the revenues, gross or net income, receipts, gains, or compensation, as the case may be, attributable to the Tax Indemnification Period and the denominator of which is the total amount of revenues, gross or net income, receipts, gains, or compensation for the entire Taxable period.

(c) Upon the incurrence of an Indemnitee of any Tax Loss or any Loss relating to an Excluded Tax Liability (as defined in Section 1.5(a) hereof), the Indemnitor shall discharge its obligations to indemnify the Indemnitee against such Tax Loss or Loss by paying to the Indemnitee in U S dollars an amount equal to the amount of such Tax Loss or Loss

(d) If an Indemnitee receives a refund or reduces its Tax liability by using a credit of any Tax in respect of the Tax Indemnification Period or any Excluded Tax Liability, the Indemnitee shall pay to the Indemnitor the amount of such refund or credit within thirty (30) days of the date on which such refund or credit is received or used by such Indemnitee.

(e) The Indemnitee agrees to give prompt notice to the Indemnitor of the assertion of any claim, or the commencement of any suit, action, proceeding, audit, or assessment in respect of which indemnity may be sought hereunder or under Section 7.1 of this Agreement relating to an Excluded Tax Liability, and of any Loss (specifying with reasonable particularity the basis therefor) and will give the Indemnitor such information with respect thereto as the Indemnitor may reasonably request.

(f) The provisions of Section 7.3 hereof shall govern any Loss with respect to a breach of any representation, covenant, or agreement set forth in Section 4.7 of this Agreement

**7.4 Definitions** For the purpose of this Agreement, the following terms have the following meanings:

(a) "Affiliate" means, with respect to any person, any person directly or indirectly controlling, controlled by, or under common control with such other person.

(b) "Code" means the Internal Revenue Code of 1986, as amended

(c) "Indemnitee" means as to the indemnification obligation of USSC, the Partnership.

(d) "Indemnitor" means as to the Partnership, USSC

(e) "Pre-Contribution Tax Period" means any Tax Period ending on or before the close of business on the Contribution Date, or, in the case of any Tax Period which includes, but does not end on, the Contribution Date, the portion of such period up to and including the Contribution Date

(f) "Tax" means (i) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid-up capital, profits, greenmail, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty, or other tax, governmental fee, or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax, or additional amount imposed by any governmental authority (a "Taxing Authority") responsible for the imposition of any such tax (domestic or foreign), and (ii) liability for the payment of any amounts of the type described in (i) as a result of any express obligations to indemnify any other Person.

(g) "Tax Asset" means any net operating loss or other Tax loss, net capital loss, investment Tax credit, foreign Tax credit, charitable deduction, or any other credit or Tax attribute of USSC which could reduce Taxes (including, without limitation, deductions and credits related to alternative minimum Taxes)

(h) "Tax Indemnification Period" means (i) any Pre-Contribution Tax Period, (ii) with respect to any Tax described in clause (ii) of Section 7.4(f), the survival period of the indemnification obligation under the applicable contract.

#### 7.5 Control of Litigation

(a) The Indemnitee agrees to give prompt notice to the Indemnitor of the assertion of any claim, or the commencement of any suit, action, or proceeding in respect of which indemnity may be sought under Section 7.1(b) of this Agreement and of any Loss which any such Indemnitee deems to be within the ambit of Section 7.1(b) of this Agreement other than relating to Taxes (specifying with reasonable particularity the basis therefor) and will give the Indemnitor such information with respect thereto as the Indemnitor may reasonably request. The Indemnitor may, at its own expense, participate in and, upon notice to such Indemnitee, assume the defense of any such suit, action, or proceeding; provided that the Indemnitor's counsel is reasonably satisfactory to Indemnitee, the Indemnitor shall thereafter consult with Indemnitee upon Indemnitee's reasonable request for such consultation from time to time with respect to such suit, action, or proceeding, and the Indemnitor shall not, without Indemnitee's consent, which consent shall not be unreasonably withheld, settle or compromise any such suit, action, or claim. If the Indemnitor assumes such defense, such Indemnitee shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnitor. For any period during which the Indemnitor has not assumed the defense thereof, the Indemnitor shall be liable for the fees and expenses of counsel employed by the Indemnitee; provided, however, that the Indemnitor shall not be liable for the fees or expenses of more than one counsel employed by the Indemnitee in any jurisdiction. If the Indemnitee assumes the defense thereof, the Indemnitee shall thereafter consult with the Indemnitor upon the Indemnitor's reasonable request for such consultation from time to time with respect to such suit, action, or proceeding and the Indemnitee shall not, without the Indemnitor's consent, which consent shall not be unreasonably withheld, settle or compromise any such suit, action, or claim. Whether or not the Indemnitor chooses to defend or prosecute any claim, all of the parties hereto shall cooperate in the defense or prosecution thereof.

(b) The Indemnitor shall not be liable under Section 7.1(b) hereof with respect to any Loss resulting from a claim or demand the defense of which the Indemnitor was not offered the opportunity to assume as provided under Section 7.5(a) hereof to the extent the Indemnitors' liability under Section 7.1(b) hereof is prejudiced as a result thereof. No investigation by Indemnitee prior to the Contribution Date shall relieve any Indemnitor of any liability hereunder.

**7.6 Transfer Taxes** USSC shall pay all Taxes or recording fees imposed on its transfers hereunder of real property and tangible and intangible personal property hereunder, including without limitation Intellectual Property, applicable to the transfers of the Assets contemplated by this Agreement and all sales and use Taxes applicable to transfers by USSC of the Assets contemplated by this Agreement.

**7.7 Cooperation on Tax Matters** USSC and the Partnership shall cooperate fully, as and to the extent reasonably requested by any of such parties, in connection with any audit, litigation, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. USSC and the Partnership agree (a) to retain all books and records which are relevant to the determination of the Tax liabilities pertinent to the Assets relating to any Pre-Contribution Tax Period until the expiration of the applicable statute of limitations and to abide by all record retention agreements entered into with any Taxing Authority, and (b) to give the other parties reasonable written notice prior to destroying or discarding any such books and records and, if another party so requests, allow such party to take possession of such books and records.

**7.8 Tax Clearance Certificate** USSC has provided or will make available to the Partnership any tax clearance certificate required by any applicable law as a result of the transactions effected thereby or an indemnity for any loss incurred by reason of the failure to provide such certificates.

## ARTICLE 8

### MISCELLANEOUS PROVISIONS

**8.1 Knowledge** References to the knowledge of USSC mean solely the actual conscious knowledge of the chief executive officer of USSC.

**8.2 Amendment and Modification** This Agreement may be amended, modified, or supplemented only by written agreement of the parties hereto.

**8.3 Waiver of Compliance; Consents** Any failure of a party to comply with any obligation, covenant, agreement, or condition herein may be waived by the other party who is the beneficiary of such provision; provided, however, that any such waiver may be made only by a written Instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be

- 16 -

03/30/99 9:43 AM

given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 8.3, with appropriate notice in accordance with Section 8.10 of this Agreement.

**8.4 Assignment** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any party may assign any of its rights hereunder, but no such assignment shall relieve it of its obligations hereunder. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person other than the parties, any successors and permitted assigns, any rights, remedy, or claim under or by reason of this Agreement or any provisions herein contained.

**8.5 Expenses, Transfer Taxes, Etc.** Except as otherwise contemplated by Section 7.1 hereof, whether or not the transactions contemplated by this Agreement shall be consummated, all fees and expenses (including all fees of counsel, actuaries, and accountants) incurred by any party in connection with the negotiation and execution of this Agreement, shall be borne by such party.

**8.6 Further Assurances** At the request of another party hereto, and without further consideration, each of the parties, at its own expense, will execute and deliver such other documents, and take such other action, as may be reasonably requested in order to consummate more effectively the transactions contemplated hereby.

**8.7 Governing Law** This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware (without regard to its conflicts of law doctrines).

**8.8 Counterparts** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

**8.9 Publicity** Neither of the parties will make any disclosure of the transactions contemplated by this Agreement or any discussions in connection therewith, without the prior written consent of each of the other parties. The preceding sentence shall not apply to any disclosure required to be made by Law or the regulations of any stock exchange(s) as reasonably determined by counsel to the party determining that such disclosure is required, except that such party, whenever practicable, shall be required to consult with the other party concerning the timing and content of such disclosure before making it.

**8.10 Notices** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to USSC :

150 Glover Avenue  
Norwalk, CT 06856  
Attn: Treasurer

If to the Partnership:

15 Hampshire Street  
Mansfield, MA 02048  
Attn: Treasurer

**8.11 Specific Performance** Each of the parties acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement and that irreparable harm would result if this Agreement were not specifically enforced. Therefore, the rights and obligations of the parties under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. A party's right to specific performance shall be in addition to all other legal or equitable remedies available to such party.

**8.12 Headings.** The article and section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**8.13 Entire Agreement** This Agreement, including the schedules, exhibits, and other documents and instruments referred to herein, together with the Partnership Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

**8.14 Severability** If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**8.15 Schedules.** All Schedules attached hereto are hereby incorporated in and made a part as if set forth in full herein.



IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written

**UNITED STATES SURGICAL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**THE KENDALL COMPANY LP**

By: SWD HOLDING INC I  
Its: General Partner

By: \_\_\_\_\_  
Name: Charles Dockendorff  
Title: Vice President

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written

UNITED STATES SURGICAL CORPORATION

By: 

Name:

*Kimberly G. Bernsten*

Title:

*Vice President + General Counsel*

THE KENDALL COMPANY LP

By: SWD HOLDING INC I

Its: General Partner

By: \_\_\_\_\_

Name: Charles Dockendorff

Title: Vice President

ALICE + JUDY  
MAR. 30 1999 1:00PM

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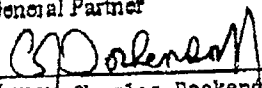
IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the  
day and year first above written.

UNITED STATES SURGICAL CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE KENDALL COMPANY LP

By: SWD HOLDING INC. I  
Its: General Partner

By:   
Name: Charles Dockendorff  
Title: Vice President

- 19 -

03/30/99 9:43 AM

Schedule 1.2

USSC Excluded Operations and Assets

All assets used in or relating to USSC's Vascular Therapies Division or its Ultrasound Technologies Division, or to its heart pump technology, benign prostate hyperplasia technology, or orthopedic technologies

03/30/99 9:43 AM