

Re: 5/1206

05-18-2006



103209679

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	CORRECTIVE ASSIGNMENT
NATURE OF CONVEYANCE:	Corrective Assignment to correct the missing definition for the term Assets and to add Lifestream International, Inc. as a receiving party previously recorded on Reel 003273 Frame 0790. Assignor(s) hereby confirms the Assets as listed in Schedule 1.2 of the Asset Purchase Agreement.

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Fleet Capital Corporation		09/19/2000	CORPORATION: RHODE ISLAND

RECEIVING PARTY DATA

Name:	Denver Biomedical, Inc.
Doing Business As:	DBA (Now known as) Denver Biomedical, Inc. (a Delaware Corporation)
Street Address:	14998 W 6th Ave Bldg E-700
City:	Golden
State/Country:	COLORADO
Postal Code:	80401
Entity Type:	CORPORATION: TEXAS

Name:	Lifestream International, Inc.
Street Address:	2828 North Crescent Ridge Drive
City:	The Woodlands
State/Country:	TEXAS
Postal Code:	77381
Entity Type:	CORPORATION: TEXAS

PROPERTY NUMBERS Total: 5

Property Type	Number	Word Mark
Registration Number:	2656644	DENVER
Registration Number:	2174010	PLEURX
Registration Number:	2186396	PARAPRO
Registration Number:	1450584	DENVER
Registration Number:	1177942	DENVER

OP \$140.00 2656644

CORRESPONDENCE DATA

Fax Number: (303)473-2720
Correspondance will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 303-473-2700
 Email: kmiller@hollandhart.com
 Correspondent Name: Kristine M. Miller
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 Address Line 2: P.O. Box 8749
 Address Line 4: Denver, COLORADO 80201

ATTORNEY DOCKET NUMBER:	43501.0002
NAME OF SUBMITTER:	Kristine M. Miller
Signature:	/Kristine M. Miller/
Date:	05/12/2006

Total Attachments: 46

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TRADEMARK ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY
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CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Fleet Capital Corporation		09/21/2000	CORPORATION: RHODE ISLAND

RECEIVING PARTY DATA

Name:	Denver Biomedical, Inc.
Doing Business As:	DBA (now known as) Denver Biomedical, Inc. (a Delaware corporation)
Street Address:	14998 W 6TH AVE BLDG E-700
City:	Golden
State/Country:	COLORADO
Postal Code:	80401
Entity Type:	CORPORATION: TEXAS

PROPERTY NUMBERS Total: 5

Property Type	Number	Word Mark
Serial Number:	78077399	DENVER
Serial Number:	75279136	PLEURX
Serial Number:	75120984	PARAPRO
Serial Number:	73505092	DENVER
Serial Number:	73197544	DENVER

CORRESPONDENCE DATA

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 Address Line 4: Denver, COLORADO 80201

OP \$140.00 78077399

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**TRADEMARK
 REEL: 003311 FRAME: 0597**

ATTORNEY DOCKET NUMBER:	43501.0002
NAME OF SUBMITTER:	Kristine M. Miller
Signature:	/Kristine M. Miller/
Date:	03/21/2006
Total Attachments: 5 source=Release of Security Interest from Fleet#page1.tif source=Release of Security Interest from Fleet#page2.tif source=Release of Security Interest from Fleet#page3.tif source=Release of Security Interest from Fleet#page4.tif source=Release of Security Interest from Fleet#page5.tif	

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[Fleet Capital Corporation Letterhead]

September 19, 2000

DBMI Holdings, Inc.
323 Yankee Creek Road
Evergreen, Colorado 80439

Re: Consent of Fleet Capital Corporation to the Sale of Assets of Denver Biomedical, Inc.

Dear Sirs and Madames:

In connection with the sale ("Sale") of substantially all the assets of Denver Biomedical, Inc. ("DBI") to DBMI Holdings, Inc. ("DBMI"), pursuant to that certain Asset Purchase Agreement dated as of September 19, 2000 ("DBI Agreement") among DBMI, DBI, Lifestream International, Inc. ("Lifestream") and Lifestream International Holdings, Inc. ("LI Holdings"), Fleet Capital Corporation ("Fleet") hereby agrees that upon receipt by Fleet of the net proceeds from the Cash Consideration (as defined in the DBI Agreement) in the amount of [REDACTED] on or prior to September 21, 2000:

1. Fleet, individually as a Lender and as Agent for itself and the Lenders, consents to the sale of the Assets (as defined in the DBI Agreement) in accordance with the DBI Agreement for the Purchase Price (as defined in the DBI Agreement) and terminates and releases the Assets from all covenants and arrangements and from any security interest, lien, right of set off or pledge arising in connection with the Loan Agreement or its ancillary documents, all of which are terminated as the Assets and are of no further force or effect.
2. Fleet, individually as a Lender and as Agent for itself and the Lenders, terminates and releases DBI from the Master Security Agreement, and the Copyright, Trademark and Patent Mortgage, and agrees to execute and deliver to DBMI any and all documents reasonably requested by DBMI which are necessary to evidence such termination and release.
3. Fleet, individually as a Lender and as Agent for itself and the Lenders, will deliver to DBMI on or before September 22, 2000 the UCC-3 termination statements for the UCC-1 financing statements listed on Exhibit A attached hereto and will execute and deliver to DBMI any additional documents reasonably requested by DBMI which are necessary to give effect to the foregoing termination statements.

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DBMI Holdings, Inc.
September 19, 2000
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- 4. Fleet, individually as a Lender and as Agent for itself and the Lenders, acknowledges it will not have any recognizable interest in funds transmitted to the Fleet lockbox #99632 in payment of DBI or DBMI invoices after the effective time of the Sale. Fleet agrees to promptly remit any amounts received in such lockbox in accordance with written instructions from DBMI.
- 5. Fleet, individually as a Lender and as Agent for itself and the Lenders, at any time after the Sale, and with out additional cost or expense to DBMI, will execute and deliver to DBMI such other and further documents or instruments reasonably requested by DBMI evidencing its consent to the Sale and release of the Assets and take such other action as DBMI may reasonably request in order to give effect to the foregoing.

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Any capitalized term used herein and not otherwise specifically defined will have the meaning ascribed to it in the Loan Agreement.

Sincerely,

FLEET CAPITAL CORPORATION,
As Agent

By: [Signature]
Name: Daniel Corio
Title: Vice President

Lifestream International, Inc. acknowledges that it is responsible for all costs incurred by Fleet in connection with the above matters. Lifestream agrees that after giving effect to the Sale, Denver Biomedical, Inc. shall have no assets through the date of its dissolution.

LIFESTREAM INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

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DMBI Holdings, Inc.
September 19, 2000
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EXHIBIT A

<i>UCC-1 Financing Statements</i>			
<i>Debtor</i>	<i>Secured Party/Assignee</i>	<i>Jurisdiction</i>	<i>File No. and Date</i>
Lifestream International, Inc. ("Lifestream")	Fleet Capital Corporation ("Fleet")	Secretary of State of Colorado	19992054674 9/30/99
Lifestream.	Fleet	Secretary of State of Colorado and Jefferson County, Colorado (fixture)	F0939721 10/11/99
Denver Biomedical, Inc. (fka Denver Biomaterials, Inc.) ("DBI")	Fleet	Secretary of State of Colorado	19992054675 9/30/99
DBI	Fleet	Secretary of State of Colorado and Jefferson County	F0939719 10/11/99
DBI	Fleet	Jefferson County, Colorado (fixture)	F0939718 10/11/99
DBI	Fleet	Jefferson County, Colorado (fixture)	F0939716 10/11/99
DBI	Fleet	Secretary of State of Texas	99-197996 9/30/99
DBI	Lifestream / Fleet	Secretary of State of Colorado	19992056744 10/11/99
DBI	Lifestream / Fleet	Secretary of State of Colorado and Jefferson County	F0939717 10/11/99
DBI	Lifestream / Fleet	Secretary of State of Texas	99-204911 10/11/99

EXECUTION COPY

ASSET PURCHASE AGREEMENT

AMONG

DENVER BIOMEDICAL, INC.,

LIFESTREAM INTERNATIONAL, INC.,

AND

LIFESTREAM INTERNATIONAL HOLDINGS, INC.

AND

DBMI HOLDINGS, INC.

Dated as of September 19, 2000

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is made and entered into this 19th day of September, 2000, but effective as of 12:01 a.m. Central Time, on September 16, 2000, by and among Denver Biomedical, Inc., a Texas corporation ("Seller"), Lifestream International, Inc., a Texas corporation ("LSI"), and Lifestream International Holdings, Inc., a Delaware corporation ("LSIH") (LSI and LSIH are collectively referred to herein as "Parents" and each as a "Parent"), and DBMI Holdings, Inc., a Delaware corporation ("Buyer").

RECITALS

- A. Seller desires to sell to Buyer or its designee its business and assets relating to the design, development, manufacturing, packaging, marketing, distributing and selling of the fluid management medical devices ("Products") which are listed on the attached Products Schedule. The business to be purchased hereunder is referred to herein as the "Business."
- B. Buyer desires to buy the Assets of the Business and assume the Assumed Liabilities (as hereinafter defined).

NOW, THEREFORE, the parties hereto do agree as follows:

1. PURCHASE AND SALE

- 1.1. Purchase and Sale of the Business. Subject to the terms and conditions of this Agreement and on the basis of and in reliance upon the warranties, representations and obligations set forth herein, Seller agrees to sell to Buyer the Business as a going concern and the assets listed below.
- 1.2. Description of the Assets. The assets to be purchased hereunder consist of all of the assets utilized in the Business as of the Closing Date other than Retained Assets as defined in Section 1.3 and the assets set forth on the Balance Sheet that Seller has disposed of subsequent to that date in the ordinary course of business (collectively the "Assets"). The Assets shall include, but not be limited to, the assets described below:
 - (a) All of the machinery and equipment (including laboratory and office equipment, and plant and office furniture, fixtures and furnishings), appliances, computer hardware, materials, tools, dies, molds, accessories, spare parts and repair or replacement parts applicable thereto, used in the operation of the Business, including without limitation that machinery and equipment identified on Schedule 1.2(a) ("Machinery and Equipment").
 - (b) All accounts and notes receivable of the Business, including, without limitation, those items identified on Schedule 1.2(b), as the same shall exist on the Closing Date ("Accounts Receivable").
 - (c) Good, usable and salable inventories of the Products, wherever situated, consisting of raw materials, work in progress, finished goods, samples, and packaging materials used in the Business and inventories of replacement parts, in each case on hand as of the Closing Date and used in connection with the Business, including, without limitation, those items identified on Schedule 1.2(c) (the "Inventory").

- (d) All supplies used in connection with the Business as the same shall exist on the Closing Date, including, without limitation, those items identified on Schedule 1.2(d) ("Supplies").
- (e) All deposits and prepaid expenses relating to the Business as the same shall exist on the Closing Date, including, without limitation, those items identified on Schedule 1.2(e) ("Prepaid Expenses").
- (f) All patents, patent applications, inventions, invention rights, trademarks, trade names, copyrights, service marks, processes (including, without limitation, all formulac and processes for the production of the Products), and all know-how, drawings, blue prints, computer software (to the extent transferable), specifications, designs, technology, data, product development rights, trade secrets and other proprietary information, together with all applications and registrations in connection therewith, used exclusively in the conduct of the Business, including without limitation the rights and property described in Schedule 1.2(f) (the rights and property described in this Section 1.2(f) together with Seller's rights under licenses and agreements referred to in Section 3.1(i) are collectively referred to as the "Intellectual Property").
- (g) Seller's interest in the Assumed Executory Contracts (as defined in Section 3.1) (together with any advance payments thereon).
- (h) Seller's records, files, customer lists, employee records, laboratory notebooks, data bases, business plans, market analysis surveys, sales literature, and marketing plans relating to the Business, and files and records (including registration and pending applications) relating to patents, trademarks, trade names, service marks and other property comprising the Intellectual Property, whether in electronic, media or other form ("Primary Books and Records").
- (i) Copies of Seller's or Parents' "Secondary Books and Records" consisting of items relating to the Business that would constitute Primary Books and Records if they did not also relate to activities in addition to the Business.
- (j) To the extent assignable, all franchises, grants, easements, variances, exemptions, permits, licenses, registrations, certifications, approvals and authorizations of all federal, state or local or foreign governmental or regulatory bodies ("Permits") held for the operation of the Business including without limitation those listed on Schedule 1.2(i).
- (k) To the extent assignable and related to the Business, all right, title and interest of the Seller under any agreements in favor of Seller providing for confidentiality, secrecy, non-disclosure of information of, or refraining from competition, solicitation of employees and/or customers of or with, the Business, all of which are listed on Schedule 3.1.
- (l) Seller's rights to the name "Denver Biomedical," "Denver Biomaterials," "DBI" and variations of each of the foregoing.
- (m) All causes of action, judgments, claims or demands of whatever kind or description that Seller has or may have against any other person or entity arising out of or

pertaining to the Assets, including without limitation the Seller's Claims listed on Schedule 1.2(m), to the extent assignable (the "Seller's Claims").

- (n) All automobiles, trucks and other motor vehicles used in the Business, including without limitation the Vehicles described on Schedule 1.2(n) (the "Vehicles").
- (o) All of Seller's telephone and facsimile numbers, domain names, and Internet addresses, including without limitation those items listed on Schedule 1.2(o).

1.3. Retained Assets. Notwithstanding anything to the contrary set forth in this Agreement, the Assets shall not include the following assets ("Retained Assets"):

- (a) Cash on hand or at banks, including uncleared checks to Seller's order, and cash equivalents, whether or not related to the Business.
- (b) Seller's rights under the Retained Executory Contracts (as hereinafter defined) relating to the Business.
- (c) Seller's minute books, stock ledgers and other corporate organizational documents.
- (d) Original copies of Secondary Books and Records.
- (e) All assets relating to the Plans (as defined in Section 5.23).
- (f) Assets listed on Schedule 1.3(f).

1.4. Assumption of Liabilities. Except as expressly set forth in this Section 1.4, Buyer assumes no liabilities or obligations of Seller, whether such liabilities are or may be direct or indirect, absolute or contingent, or relating to the Business. On the terms and subject to the conditions hereof, on the Closing Date, Buyer shall assume and agree to pay, perform and discharge, as and when due, the following (all of which are referred to collectively as "Assumed Liabilities"):

- (a) Bona fide current liabilities of the Business as shown on the Closing Statement (as hereinafter defined) ("Current Liabilities").
- (b) All obligations, responsibilities and liabilities relating to or arising out of or incurred in connection with performance after the Closing Date of Assumed Executory Contracts.
- (c) The accrued but unused vacation time for Transferred Employees (as hereinafter defined), as identified on Schedule 1.4(c).

Other than as set forth in clauses (a), (b) and (c) above, all debts, liabilities and obligations (including tax liability) of Seller or to the extent attributable to the operation of the Business (including product liability) prior to the Closing Date shall continue after the Closing Date to be the debts, liabilities and obligations of Seller (collectively, the "Retained Liabilities").

2. PURCHASE PRICE

2.1. Purchase Price. The purchase price to be paid by Seller to Buyer hereunder for the Assets ("Purchase Price") shall be (a) XXXXXXXXXX delivered at Closing ("Cash Consideration") and (b) assumption by Buyer of the Assumed Liabilities at Closing. The Cash Consideration shall be increased or decreased, on a dollar for dollar basis, to

reflect any difference, as identified on the Cash Consideration Calculations, as provided in Section 2.2.

- 2.2. **Cash Consideration Calculations.** The Cash Consideration shall be adjusted at Closing as follows: Seller shall deliver the "First Cash Consideration Calculation," stating the difference, if any, between the value of the net assets as shown on the statements of net assets as of July 31, 2000 and August 31, 2000 in the format of Schedule 2.2(a). The Cash Consideration may be subject to further adjustment based on the difference, if any, of the value of net assets as of July 31, 2000 and as of the Closing Date, as set forth in the Closing Statement (as defined in Section 2.4). The "Second Cash Consideration Calculation," in the format of Schedule 2.2(b), shall be delivered by Seller concurrently with the Proposed Statement (as defined in Section 2.3) and any disputes shall be resolved in accordance with Section 2.4.
- 2.3. **Statements of Net Assets.** Seller has previously delivered to Buyer a statement of net assets as of July 31, 2000 ("July Statement"), and a statement of net assets as of August 31, 2000 ("August Statement"), both of which are attached as Schedule 2.3. Seller will prepare and deliver within ten business days of the Closing Date, a statement of net assets as of the Closing Date, which shall include any prorations to be made pursuant to Article 9 hereof ("Proposed Statement").
- 2.4. **Resolution of Disputes.** Seller shall permit Buyer access to such work papers relating to the preparation of the Proposed Statement as may be reasonably necessary to permit Buyer to review in detail the manner in which the Proposed Statement was prepared. The Cash Consideration set forth in the Second Purchase Price Calculation and the Proposed Statement shall be deemed to be correct and accepted by Buyer on the sixtieth (60th) day following receipt by Buyer of the Proposed Statement and the Second Purchase Price Calculation, unless prior to such day, Buyer shall have objected in writing thereto, stating with reasonable specificity the basis for its objection and the amounts subject to dispute. If Buyer fails to timely object, the Proposed Statement shall become the "Closing Statement". If Buyer timely objects, the parties shall attempt in good faith to resolve the dispute within thirty (30) days ("Resolution Period") after notice of objection. If the parties cannot resolve the dispute within the Resolution Period, the disputed items shall be resolved by the Denver, Colorado office of SKB Business Services, Inc. ("Accountants") who shall act as experts and not as arbitrators and whose determination shall be final and binding. The Accountants shall consider only those items and amounts in the Proposed Statement that Buyer and Seller are unable to resolve. Buyer and Seller shall direct the Accountants to render a determination within 25 days after their retention and Buyer and Seller shall use their best efforts to cause the Accountants to resolve all disagreements over individual line items as soon as possible. Accountants shall allocate the cost of their services among the parties on the basis of items against whom each specific objection is decided. The allocation of cost by Accountants shall be final and binding on the parties. Unless the Proposed Statement is accepted without objection by Buyer as provided above, the statement of net assets as finally agreed to by Buyer and Seller or as determined by Accountants shall be the "Closing Statement".

2.5. Payment of the Purchase Price.

- (a) At the Closing, Buyer shall pay the Cash Consideration, as adjusted in accordance with the First Cash Consideration Calculation.
- (b) All payments to be made hereunder shall be made by wire transfer in United States dollars in immediately available funds to the account specified in writing by Seller.
- (c) Within three business days of the determination of the Closing Statement and the finalization of the Second Cash Consideration Calculation as provided herein, if the Cash Consideration is further adjusted, the party owing the adjustment shall remit the full amount to the other party in immediately available funds. Any amounts payable as a result of an adjustment to the Cash Consideration based upon the Second Cash Consideration Calculation shall give effect to amounts paid as a result of the First Cash Consideration Calculation.

2.6. Allocation of Purchase Price. Seller and Buyer shall allocate the Purchase Price among the Assets, using the allocation method required by Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto (the "Code") in a mutually agreeable manner within sixty (60) days of the Closing Date, subject to adjustment in a manner consistent with any changes to the Closing Statement from the Proposed Statement; provided however, that Seller and Buyer shall agree as to the value of the Assets to the extent necessary in order to calculate the taxes to be paid pursuant to Section 9.2(c) at least five (5) business days prior to the date on which such taxes are due. Seller and Buyer each agree to report the federal, state and local income and other tax consequences of the transactions contemplated herein and, in particular to report the information required by Code Section 1060(b), that it will not voluntarily take an inconsistent position upon examination of any tax return or report, in any refund claim, in any litigation or otherwise with respect to any tax return or report.**3. EXECUTORY CONTRACTS****3.1. Assumed Executory Contracts. At the Closing, Seller agrees to assign to Buyer and Buyer agrees to assume and in due course perform the following contracts of the Business ("Assumed Executory Contracts"):**

- (a) **Backlog Contracts.** All right, title and interest of Seller in or to those contracts entered into thirty (30) or more days prior to the Closing Date, all of which are listed on Schedule 3.1, and all right, title, interest of Seller in or to those contracts entered into subsequent to thirty (30) days prior to the Closing Date, in the ordinary course of business, on commercially reasonable terms, for the sale and delivery after the Closing Date of Products to customers ("Backlog Contracts"). Unless expressly agreed by Buyer, Buyer shall not assume any Backlog Contracts not set forth on Schedule 3.1 with a value in excess of \$10,000 individually or \$50,000 when taken together with all other Backlog Contracts not described on Exhibit 3.1.
- (b) **Supply Contracts.** All right, title and interest of Seller in or to contracts entered into prior to the Closing Date for the purchase by Seller after the Closing Date of materials or supplies to be used in, or services rendered to, the Business, all of which are listed on Schedule 3.1 ("Supply Contracts").

- (c) Equipment Leases. All right, title and interest of Seller under equipment leases for equipment utilized in the Business but not owned by Seller, all of which are listed on Schedule 3.1 ("Equipment Leases").
 - (d) Real Property Lease. All right, title and interest of Seller under the real property lease listed on Schedule 3.1 ("Real Property Lease").
 - (e) Capital Expenditures. All right, title, and interest of Seller to complete after the Closing Date those contracts for the purchase of capital assets or other capital expenditures entered into in the ordinary course of business on commercially reasonable terms, including but not limited to those listed on Schedule 3.1 and all rights of Seller under such contracts ("Capital Expenditures").
 - (f) Distributorship Agreements, etc. All right, title and interest of Seller under those distributorship agreements and sales representative agreements listed on Schedule 3.1 ("Distributorship Agreements, etc.").
 - (g) Consulting Agreements. All right, title and interest of Seller under those consulting agreements listed on Schedule 3.1 ("Consulting Agreements").
 - (h) Warranties, etc. All right, title and interest of Seller under or pursuant to any transferable warranties, representations, guarantee or indemnities made to Seller by third parties listed on Schedule 3.1 ("Warranties, etc.").
 - (i) Intellectual Property Licenses. All right, title and interest of Seller under or pursuant to those licenses with third parties of intellectual property utilized in the Business listed on Schedule 3.1 ("Intellectual Property Licenses").
 - (j) Confidentiality Agreements. All right, title and interest of Seller under those confidentiality agreements in favor of Seller listed on Schedule 3.1 to the extent related to the Business ("Confidentiality Agreements").
 - (k) Non-Compete Agreements. All right, title and interest of Seller under non-compete agreements in favor of Seller listed on Schedule 3.1 to the extent related to the Business ("Non-Compete Agreements").
 - (l) Other Material Contracts. All right, title and interest of Seller under the other material contracts of the Business listed on Schedule 3.1 ("Other Materials Contracts").
- 3.2. Retained Executory Contracts. Any contract, agreement, understanding or arrangement, written or oral, whether or not related to the Business not expressly assumed by Buyer hereunder shall be retained by Seller, including but not limited to the following ("Retained Executory Contracts"):
- (a) Employment Agreements with current employees listed on Schedule 3.2(a).
 - (b) All Plans.
 - (c) Those listed on Schedule 3.2(c).
- 3.3. Rights of Third Parties. To the extent that any of the Assumed Executory Contracts are not assignable without the consent of a person not a party hereto and such consent is not obtained prior to the Closing, neither this Agreement nor any Exhibit or

Schedule hereto or any related documents shall constitute an assignment or an attempted assignment if such action would constitute a breach thereof. Seller agrees to use all reasonable efforts to obtain consents to the assignment to Buyer by such other persons of all such agreements where in the opinion of Buyer's counsel, such consent is required or advisable. If such consent is not obtained, and in all events prior to the receipt of any consent if such consent is obtained after the Closing, each of the parties hereto agrees to cooperate with the other in any reasonable alternative arrangement that will permit Buyer the full benefits of such agreements, including, without limitation, subcontracting, sublicensing and delegation of performance.

4. EMPLOYEE MATTERS

- 4.1. Transferred Employees. Effective as of the Closing Date, Buyer shall offer employment to all active employees of the Business (including those on short-term disability, temporary leave and temporary lay-off, but excluding employees hired on a temporary basis) as of the Closing Date, provided that employees on short-term disability, temporary leave and temporary lay-off shall be offered employment in their same status, in each case at responsibilities and compensation substantially equivalent to or greater than their present level. Such offers shall be outstanding at least ten (10) business days. Employees who accept offers of employment made by Buyer pursuant hereto are referred to as the "Transferred Employees." The term "Transferred Employees" shall not include any employees, whether current or former, of Seller who are hired pursuant to an offer made after the expiration of the offer made by Buyer under this Section 4.1. Seller shall assist Buyer in effecting the change of employment of the Transferred Employees as of the Closing Date in an orderly fashion. Buyer shall not assume any contract with any of Seller's employees, agents, consultants, officers or other representatives that is not cancelable by Buyer without penalty or premium on not more than 30 days' notice. Except as required by Section 4.3 of this Agreement, Buyer accepts no liability with respect to any Plan(s) under which any of the Transferred Employees are covered or benefited by immediately prior to the Closing Date.
- 4.2. Recognition of Service. With respect to the Transferred Employees, Buyer shall recognize all service and plan participation recognized under Seller's employee benefit plans for purposes of eligibility and vesting under all of Buyer's employee benefit plans and programs.
- 4.3. Vacation. With respect to those Transferred Employees who have accrued and unused vacation time as of the Closing Date, Buyer will permit such Transferred Employees an opportunity to schedule vacation time off with pay for the accrued and unused vacation to which such Transferred Employees were entitled under Seller's vacation policies as of the Closing Date. Schedule 1.3(c) sets forth any and all accrued but unused vacation for Transferred Employees as of the Closing Date. Accrued and unused vacation liabilities of such Transferred Employees as of the Closing Date shall be deemed an Assumed Liability.
- 4.4. Severance Plans. Effective as of the Closing Date, Buyer shall establish with respect to the Transferred Employees a severance policy substantially equivalent to that policy as in effect as of the Closing Date, as described in Parent's employee handbook. Also effective as of the Closing Date, Buyer shall assume all severance obligations for

any of Seller's employees who are not offered employment with Buyer at substantially equivalent or better levels of responsibility or compensation in accordance with Section 4.1.

- 4.5. **Seller's Release.** Seller shall release all Transferred Employees from any obligations of confidentiality or non-competition they have to Seller, to the extent they relate to the Business other than obligations contained in agreements that are Assumed Executory Contracts or which are otherwise assigned to Buyer hereunder. Seller shall assign to Buyer any and all of its rights with respect to confidentiality and non-competition obligations of all current and former employees of the Business to the extent they relate to the Business. Seller has delivered to Buyer accurate and complete copies of all confidentiality or non-competition agreements contemplated by this Section 4.5.
- 4.6. **Employee Rights.** Nothing herein expressed or implied shall confer upon any employee, agent, consultant or director of Seller, any Transferred Employee, any other employee or any legal representative thereof any rights or remedies, including any right to employment or continued employment for any specified period, for any specific remuneration or of any nature or kind whatsoever, under or by reason of this Agreement.
- 4.7. **Wage Reporting.** Wages paid by Seller to Transferred Employees during 2000 shall be considered attributable to Buyer for purposes of Code Section 3121(a)(1). Buyer shall furnish each Transferred Employee one statement of Income Tax Withheld on Wages (IRS Form W-2) for wages paid by Buyer. Seller shall file appropriate IRS Forms W-2 for the period from January 1, 2000 to the Closing Date. Buyer shall file appropriate IRS Forms W-2 and W-3 covering Transferred Employees with the Social Security Administration for the period from the Closing Date through December 31, 2000. Seller and Buyer shall comply with the provisions of Rev. Proc. 96-60. Seller shall provide to Buyer computer information relative to wages paid to the Transferred Employees prior to the Closing Date to permit Buyer to comply with this Section 4.7.

5. REPRESENTATIONS AND WARRANTIES OF SELLER AND PARENTS

Seller and Parents, jointly and severally, represent and warrant to Buyer, as follows:

- 5.1. **Corporate Organization.** Each of Parents and Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and is duly qualified or licensed as a foreign corporation authorized to do business in each jurisdiction in which the character of the Assets or the nature of the Business requires it to be so licensed or qualified and where the failure to be so licensed or qualified would have a material and adverse effect on the Business. Seller has full corporate power and authority to carry on the Business as now being conducted.
- 5.2. **Authorization.** Each of Parents and Seller has full corporate power and authority to execute, deliver and perform this Agreement and, to the extent it is a party thereto, the documents to be delivered at Closing (collectively, the "Seller Agreements") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Seller Agreements by each of the Parents and Seller and the consummation by each of Parents and Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate and shareholder action and no other corporate action or proceeding on the part of either

Parent or Seller or their respective shareholders to authorize the execution and delivery by Parents and Seller of this Agreement or the Seller Agreements or the consummation by each of the Parents and Seller of the transactions contemplated hereby or thereby or the performance of each of Parents' and Seller's obligations hereunder and thereunder. This Agreement and the Seller Agreements have been duly executed and delivered by each of Parents and Seller and this Agreement and the Seller Agreements are legal, valid, and binding obligations of each of Parents and Seller, enforceable against it in accordance with their terms, subject to applicable laws affecting creditors' rights generally and, as to enforcement, to general principles of equity, regardless of whether applied in a proceeding at law or in equity.

5.3. No Violations; No Consents or Approvals Required. Except as set forth in the Disclosure Schedule attached hereto ("Disclosure Schedule"), neither the execution or delivery of this Agreement or the Seller Agreements nor the consummation of the transactions contemplated hereby or thereby will (i) conflict with or violate any provision of the charter or bylaws of Seller or either Parent, (ii) conflict with or violate any law, rule, regulation, ordinance, order, writ, injunction, judgment, or decree applicable to the Business or by which any of the Assets are bound or affected, or (iii) conflict with or result in any breach of, constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination or cancellation of, or accelerate the performance required by or maturity of, or result in the creation of any security interest, lien, charge or encumbrance on any of the Assets pursuant to any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, or other instrument or obligation to which Seller is a party, except, in the case of (ii) and (iii) above, such conflicts, violations, breaches, defaults, terminations, cancellations, accelerations, liens, charges or encumbrances that individually or in the aggregate will not have a material adverse effect on the Assets or the Business. Except as set forth in the Disclosure Schedule, no notice, declaration, report or other filing or registration with, and no waiver, consent, approval or authorization of, any governmental or regulatory authority or instrumentality or any other person is required to be submitted, made or obtained by Seller or either Parent in connection with the execution, delivery or performance of this Agreement or the Seller Agreements and the consummation of the transactions contemplated hereby and thereby.

5.4. Financial Information.

- (a) Seller has previously delivered to Buyer the July Statement and the August Statement and the related monthly trial balance for each month and the portion of the current fiscal year then ended (all of which are attached as Schedule 2.3 and are collectively referred to as the "Financial Information"). The Financial Information and the Proposed Statement were and will be, respectively prepared from and are and will be in accordance with the books and records of Seller and Parents, fairly present and will fairly present the financial position of the Business as of the date set forth therein and the results of operations of the Business for the date set forth therein, in each case in conformity with generally accepted accounting principles applied consistent with past practice, except as otherwise noted therein and subject to normal year-end audit adjustments.

- (b) With respect to the contracts and commitments for the sale of goods or the provision of services by the Seller, the Financial Information contain and to the knowledge of Seller and Parents after due inquiry, reflect adequate reserves, which are consistent with previous reserves taken, for all reasonably anticipated doubtful accounts, material losses, and costs and expenses.
- (c) The amounts shown as accrued for current and deferred income and other taxes in the Financial Information are sufficient for the payment of all accrued and unpaid federal, state and local income taxes, interest penalties, assessments, or deficiencies applicable to the Seller, whether disputed or not, for the applicable period then ended and periods prior thereto.
- (d) Except as set forth in the Disclosure Schedule and except for those incurred in the ordinary course of business and consistent with past practice, since July 31, 2000 to the date of this Agreement, the Business has not incurred any liabilities or obligations (whether accrued, absolute, contingent or otherwise) which have not been discharged prior to the date of this Agreement and which are (i) in excess of \$10,000 individually, or (ii) when taken together with all other such liabilities and obligations are in excess of \$50,000 in the aggregate.
- (e) The Primary Books and Records, the Secondary Books and Records and Seller's general ledgers, stock record books, minute books and other material records relating to the assets, properties, contracts and outstanding legal obligations of Seller are complete and correct, and have been maintained in accordance with good business practices generally maintained within the industry in which the Business operates and the matters contained therein are appropriate and accurately reflected in the Financial Information.

5.5. **Title to Assets.** Except as set forth in the Disclosure Schedule, Seller owns outright and has full legal and beneficial title to all of the Assets free and clear of all liens, pledges, mortgages, security interests, conditional sales contracts and encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer will become the legal and beneficial owner of the Assets, free and clear of all mortgages, pledges, liens, security interests, conditional sales agreements, encumbrances or charges of any kind (collectively, the "Liens"), except for (i) Liens created by Buyer, (ii) Liens relating to the Assumed Liabilities which are set forth on Schedule 5.5, and (iii) Liens which, either individually or in the aggregate, are not material to the value, use or transferability of any Asset. Except for the Retained Assets and the Retained Liabilities, the Assets (including the Assumed Executory Contracts) constitute all assets used by Seller in the operation of the Business and are sufficient to operate the Business as presently conducted. All of the physical locations where the tangible Assets are present are listed in the Disclosure Schedule. Except as set forth in the Disclosure Schedule, no financing statement under the Uniform Commercial Code or similar law naming Seller or either Parent with regard to the Assets, or any of their respective predecessors is on file in any jurisdiction in which Seller owns property or does business or in which either Parent has a transferable interest in the Seller or the Assets, and neither Seller nor either Parent is a party to or bound under any agreement or legal obligation authorizing any party to file any such financing statement. The Disclosure Schedule contains a complete and accurate list of the location of all real

property which is owned, leased or operated in conducting the Business and describes the nature of Seller's interest in that real property.

5.6. Absence of Change. Except as set forth in the Disclosure Schedule, since July 31, 2000,

- (i) the Business has been operated in the ordinary course in a manner consistent with past practice;
- (ii) there has not been any change in the operations, properties, assets or condition, financial or otherwise, of the Business other than changes, none of which, individually or in the aggregate, has been materially adverse to the Business;
- (iii) Seller has not entered into any agreement, contract, lease or license (or series of related agreements, contracts, leases and licenses) either involving more than \$10,000 or outside the ordinary course of business;
- (iv) no party (including Seller or Parents) has accelerated, terminated, modified, or canceled any agreement, contract, lease or license (or series of related agreements, contracts, leases, and licenses) involving more than \$10,000 to which Seller is a party or by which Seller, the Assets or the Business is bound;
- (v) none of the Seller or Parents has imposed any security interest upon any of the Assets, tangible or intangible;
- (vi) Seller has not made any capital expenditure (or series of related capital expenditures), either involving more than \$10,000 or outside the ordinary course of business;
- (vii) Seller has not made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other person (or series of related capital investments, loans and acquisitions) either involving more than \$10,000 or outside the ordinary course of business;
- (viii) Seller has not issued any note, bond, or other debt security or created, incurred, assumed or guaranteed any indebtedness for borrowed money or capitalized lease obligation either involving more than \$10,000 singly or \$50,000 in the aggregate;
- (ix) Seller has not delayed or postponed the payment of accounts payable and other liabilities outside the ordinary course of business;
- (x) Seller has not canceled, compromised, waived, or released any right or claim (or series of related rights and claims), either involving more than \$10,000 or outside the ordinary course of business;
- (xi) Seller has not issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (xii) Seller has not declared, set aside or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

- (xiii) Seller has not made any loan to, or entered into any other transaction with any of its directors, officers, and employees outside the ordinary course of business;
- (xiv) Seller has not entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement; and
- (xv) none of Seller or Parents has entered into any commitments to do any of the foregoing.

- 5.7. **Asset Maintenance.** The Machinery and Equipment and all other tangible personal property owned, leased or used by Seller have been regularly maintained in accordance with normal industry practice and are in good operating condition (except for ordinary wear and tear which in the aggregate would not have a material adverse effect on the Business) and are suitable for use in the Business without present need for repair or replacement except in the ordinary course of business, and are free from defects (normal wear and tear not being considered a defect) other than such defects as do not materially interfere with the continued use thereof in the conduct of normal operations.
- 5.8. **Accounts Receivable.** Except as set forth in the Disclosure Schedule and except to the extent such Accounts Receivable have been paid in the ordinary course of business after the date of the August Statement, the Accounts Receivable (in each case net of allowances for doubtful accounts as reflected in the Financial Information) are valid receivables arising in the ordinary course of business and are subject to no valid counterclaims, setoffs or defenses. A true and correct accounts receivable aging statement as of August 31, 2000 is attached hereto as the Accounts Receivable Schedule, which shall be updated as of the Closing Date and replaced within 15 business days after Closing, to be deemed incorporated herein as of the Closing Date. Except as set forth in the Disclosure Schedule, no person has a Lien on any Accounts Receivable or any part thereof, and no agreement for deductions, free goods, discounts or deferred pricing or quantity adjustments has been made with respect to any such receivable.
- 5.9. **Inventory.** The Inventory as it is reflected in the Financial Information and the Proposed Statement has been valued in accordance with generally accepted accounting principles consistently applied and consists of a quantity and quality usable in the ordinary course of business, is not obsolete or damaged and is merchantable and fit for its intended purpose. Schedule 1.2(c) identifies the location of the Inventory.
- 5.10. **Prepaid Products or Services.** Except as set forth in the Disclosure Schedule, Seller has not received any material payment under any agreement or instrument for the sale, processing, exchange, storage or transportation of products included in the Assets or produced by the Business which requires delivery in the future to any other party thereto of products previously paid for and Seller, as of the Closing Date, will not have delivered, under any such agreement or instrument, materially more product than any other party thereto is obligated or entitled to acquire; there exists no material requirement to "make up" any deliveries of products to any third party and there has not been delivered under any such agreement or instrument materially less product than any other party thereto paid for or is obligated to purchase or acquire.

5.11. Intellectual Property.

- (a) The Intellectual Property is sufficient to conduct the Business as currently conducted. No person or entity has or is infringing or interfering with the Intellectual Property. Neither the Intellectual Property nor the Business has infringed upon, interfered with, misappropriated or violated any intellectual property right of others. Seller has not been charged nor, to Seller's knowledge, threatened to be charged with any infringement of the intellectual property rights of others. Seller has the unrestricted and exclusive right to use and enforce all trade names, trademarks, service marks, trade secrets, patents and other intellectual property utilized in connection with the Business as conducted by Seller. Except as set forth in the Disclosure Schedule, Seller has not granted any license or other right to the Intellectual Property nor made any contract or arrangement whereby any person is entitled to any royalty or other compensation for the use of any Intellectual Property. None of the past or present employees, officers, directors or shareholders of Seller has any rights in any of the Intellectual Property nor, to the knowledge of Seller, has any person made any claim to any of the Intellectual Property.
- (b) Schedule 1.2(f) identifies each patent or registration which has been issued with respect to any of the Intellectual Property, identifies each pending patent application or application for registration which any of Seller or Parents has made with respect to any of the Intellectual Property of the Business, and identifies each material license, agreement or other permission which any of Seller or Parents has granted to any third party with respect to any of its Intellectual Property (together with any exceptions). Seller has delivered to Buyer correct and complete copies of all such patents, registrations, applications, licenses, agreements, and permissions (as amended to date). Seller possesses all right, title and interest in and to the Intellectual Property, free and clear of any Lien, license or other restriction.

5.12. Contracts. The Assumed Executory Contracts (other than the Retained Executory Contracts) are all the contracts, leases, agreements, undertakings and commitments related to or constituting any of the Assets or operations of the Business. Seller is not (nor is any other party) in material default under, nor does any event, circumstance or situation exist which, with the delivery of notice or passage of time will cause a material default under any Assumed Executory Contract or any judgment, order or decree of any court or any government agency or instrumentality relating to or constituting any of the Assets or the Business under which any person, firm, corporation or other entity is or may be entitled to assert any rights against any of the Assets or the Business, except as set forth in the Disclosure Schedule.

5.13. Warranties. Seller has furnished Buyer with sample copies of the standard forms on which it customarily purchases and sells products or services in connection with the Business; and made available for inspection by Buyer complete copies of all outstanding or proposed purchase or sale agreements in connection with the Business, as of the date of this Agreement involving more than \$10,000 or having terms additional to or different from the standard forms described above. To Seller's knowledge, without limiting the generality of the foregoing, the only warranties which have been given by Seller in connection with the sale of Products are those warranties set forth in the agreements referred to in the immediately preceding sentence, or those otherwise implied by law.

As of the date of this Agreement, Seller has no liability (and, to the knowledge of Seller and Parents, there is no basis for any present or future action, suit, proceeding or hearing, investigation, charge, complaint, claim or demand against Seller giving rise to liability) arising out of any injury to individuals or property as a result of the ownership, possession or use of any Product manufactured, sold, leased or delivered by Seller.

5.14. **Litigation.** Except as set forth in the Disclosure Schedule, no legal action, suit or proceeding, judicial or administrative, or grievance, arbitration, investigation, or claim (an "Action") by or before any governmental agency is pending or, to the knowledge of each of Parents and Seller, threatened involving Seller, any Asset or the Business which if adversely determined could have a material adverse effect individually, or when taken together in the aggregate, on any Asset or the Business after the Closing Date, or on the ability of either Parent or Seller to perform its respective obligations under this Agreement or the Seller Agreements. Neither Parent nor Seller is aware of any facts which to its knowledge might result in any Action which could cause any material adverse change in the Business or its condition, financial or otherwise, or to any Asset and for which Buyer would be responsible or liable or to which any of the Assets would be subject on or after the Closing Date.

5.15. **Compliance with Laws.**

- (a) Except as would not individually or in the aggregate have a material adverse effect on the Assets or the Business, Seller is in compliance with all applicable laws, statutes, ordinances, codes, rules, requirements, regulations, policies or guidelines of foreign, federal, state and local governments and all agencies thereof ("Applicable Laws") relating to the operation of the Business and except as set forth in the Disclosure Schedule, no notices have been received by and no claims have been filed against Seller or either Parent alleging a violation of any Applicable Laws, which remain unresolved as of the date of this Agreement.
- (b) Except as set forth on the Disclosure Schedule, since January 1, 1996, Seller has not received notice of, or, to the knowledge of Seller and each Parent, is subject to any adverse inspection, finding of non-compliance, compelled or voluntary recall, investigation, penalty, fine, sanction, assessment, request for corrective or remedial action, audit or other compliance or enforcement action, relating to the Products or to any of the facilities of Seller or either Parent in which the Products are manufactured or handled, by the FDA or by any other federal, state, local, or foreign authority having or asserting responsibility for the regulation of any of the Products or for the regulation of the safety of any medical devices ("Other Authorities").
- (c) Seller has initiated or proposed corrective actions sufficient to remedy all non-compliance identified by the FDA or Other Authorities (with such non-compliance being noted on the Disclosure Schedule) and to the extent those corrective actions have not been completed as of the Closing, the actions initiated or proposed will be sufficient when completed to remedy any non-compliance identified by the FDA or any Other Authorities.
- (d) Seller has obtained all necessary approvals, registrations and authorizations from, has made all necessary and appropriate applications and other submissions to, and has complied with the requirements of the FDA and Other Authorities for their

current and past business activities relating to the Products, including but not limited to any necessary Pre-Market Notifications ("510(k)s"), Pre-Market Approvals ("PMAs"), investigational device exemptions ("IDEs"), line extension letters relating individual Products to existing 510(k)s, requirements for custom medical devices, studies of safety and efficacy, design and engineering specifications and modifications, device history records, certificates of export, and Medical Device Reports ("MDRs) and Seller shall identify all of its 510(k)s, PMAs, IDEs and MDRs on the Disclosure Schedule.

- (e) To the knowledge of Seller and each Parent, Seller not made any material false statement in, or material omission from, the applications, approvals, reports, and other submissions to the FDA and Other Authorities or in or from any other records and documentation prepared or maintained to comply with the requirements of the FDA or Other Authorities relating to its Products, including but not limited to any 510(k)s, PMAs, IDEs, line extension letters, documentation of safety and efficacy, studies or documentation of equivalency, documentation of eligibility for treatment as a pre-1976 device, documentation of eligibility for treatment as a custom medical device, certificates of export, and MDRs.
- (f) To the knowledge of Seller and each Parent after reasonable inquiry, no third party, contractor, investigator, or researcher retained by Seller or otherwise acting on behalf of Seller has made any material false statement in, or material omission from, any report, study or other documentation prepared in conjunction with the applications, approvals, reports, or records submitted to or prepared for the FDA or Other Authorities relating to the Products, nor has any such third party, contractor, investigator or researcher failed to comply with any testing requirements or study protocols in connection with work performed on behalf of Seller or work otherwise relied upon by Seller in connection with their submissions and documentation for the FDA and Other Authorities.
- (g) Neither Seller nor, to the knowledge of Seller and each Parent after due inquiry, any third party or agent acting on behalf of Seller has made or offered to make any payment, gratuity, or other thing of value that is prohibited by any law or regulation to personnel of the FDA or Other Authorities in connection with the approval or regulatory status of the Products or the facilities in which the Products are manufactured or handled.
- (h) As of the date of this Agreement and at all prior times relevant to the current regulatory status of the Products, Seller is, and has been, in compliance in all material respects with all applicable regulations and requirements of the FDA and Other Authorities relating to the Products, including but not limited to any applicable good manufacturing practices, requirements for product approval, requirements for demonstrating and maintaining the safety and efficacy of the Products, export requirements, certificates of export, requirements for investigating customer complaints and inquiries, labeling requirements and protocols, shipping requirements, record keeping and reporting requirements, monitoring requirements, packaging or repackaging requirements, laboratory controls, sterility requirements, inventory controls, and storage and warehousing procedures.

- (i) All of the Products manufactured prior to the Closing Date comply in all material respects with current FDA requirements and the requirements of Other Authorities, as applicable, were manufactured and handled by Seller in conformity with current FDA requirements and the requirements of Other Authorities, as applicable.
- (j) Neither Seller nor either Parent has received any written notification that remains unresolved as of the date of this Agreement from the FDA or Other Authorities indicating that any of the Products is unsafe or ineffective for its intended use.

5.16. **Taxes.** Except (i) as set forth in Schedule 5.16 and (ii) for any sales or use tax incurred as a result of the transactions contemplated by this Agreement, (a) all Tax Returns required to be filed by or on behalf of Seller on or before the Closing Date with respect to the Assets have been duly filed on a timely basis, (b) such Tax Returns are true, complete and correct, (c) all Taxes which were shown to be due on such Tax Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis, and (d) no other Taxes are payable by any Seller with respect to items or periods covered by such Tax Returns; provided, however, that the representations and warranties set forth in this Section 5.16 are made only to the extent that they relate to (i) Taxes that are or may become liens on the Assets or (ii) are Taxes for which the Buyer is or may be liable as a transferee, successor, purchaser or in a similar capacity with respect to the Assets. For purposes of this Section 5.16, "Taxes" shall include all federal, state, local or foreign income, gross receipts, license, payroll, employment, exercise, sales, use, transfer or other tax of any kind relating to or arising from the Business or Assets, and "Tax Return" shall include all returns, declarations, reports, claims for refund or information statement return relating to any Taxes, including any schedule or attachment thereto and any amendment thereof.

5.17. **Employees.**

- (a) Schedule 5.17 contains the names, date of commencement of employment, the total salary, bonus, fringe benefits and perquisites, position or job title and place of employment for each person employed in the conduct of the Business by Seller as of the Closing Date. Except as disclosed in Schedule 5.17, there are no other forms of compensation paid by Seller to any director, officer or employee of Seller.
- (b) Except as set forth on the Disclosure Schedule, since July 31, 2000 Seller has not:
 - (i) offered or promised to employ or continue the employment, after the Closing Date, of any employee of the Business;
 - (ii) agreed to, or changed, or increased, directly or indirectly, the salary, wages, or other compensation of any employee of the Business;
 - (iii) agreed to pay, directly or indirectly, any bonus or other extraordinary compensation to any employee of the Business;
 - (iv) agreed to pay, directly or indirectly any severance or other termination of employment benefits; or
 - (v) changed or eliminated, or terminated any employee benefit plan (within the meaning of ERISA Section 3(3)) or fringe benefit plan or bonus plan for the

benefit of any employee of the Business so as to alter Seller's or Buyer's cost or obligation thereunder.

- (c) Seller has complied in all material respects with the Immigration Reform and Control Act of 1986 and the Immigration and Nationality Act of 1990 with respect to the employees of the Business, including, but not limited to, Immigration and Naturalization Service Form I-9 requirements.
- 5.18. Collective Bargaining. Seller's employees are not subject to any collective bargaining agreements or other contracts with a labor union, contingent or otherwise, nor are any of Seller's employees represented by any labor union. The relations of Seller with its employees are satisfactory. Seller has not engaged in any unfair labor practice and there are no unfair labor charges pending or, to the knowledge of Seller and each Parent, threatened against Seller involving its current or former employees. During the 12-month period preceding the date hereof, there have not been any labor disputes or written and filed grievances or claims involving Seller's employees.
- 5.19. Powers of Attorney. Except as set forth in the Disclosure Schedule, Seller has not given to any person or party, and there is not currently existing, any power of attorney of any type pertaining to the Assets or the Business.
- 5.20. Brokers and Finders. Neither Parent nor Seller nor any of their respective stockholders, officers, directors, or employees has incurred or will incur any liability for any brokerage fees, commissions, finders' fees or similar fees or expenses for which Buyer may be liable.
- 5.21. Insurance. The insurance policies listed in the Disclosure Schedule (collectively, "Seller's Insurance Policies") comprise all policies of fire, theft, liability, professional practice and other insurance maintained as of the Closing Date with respect to the Assets or the Business. Seller's Insurance Policies will cover any claims asserted after the Closing Date that relate to, arise from or are based upon any damages or liabilities that occurred prior to the Closing Date.
- 5.22. Environmental, Health and Safety Matters.
- (a) As used herein, the term "Environmental Laws" means all federal, state, local or foreign laws, regulations, authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits or plans issued, entered, promulgated or approved thereunder relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or industrial, toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.
- (b) Without limiting the generality of the foregoing, each of Seller and Parents has obtained and complied with, and is in compliance with, all permits, licenses and other authorizations that are required pursuant to Environmental Laws for the occupation of the facilities used in the Business and the operation of the Business; a

list of all such permits, licenses and other authorizations is set forth on the attached Disclosure Schedule.

- (c) There are, with respect to Seller and, to the knowledge of Seller, its predecessor, no past or present violations of Environmental Laws, releases of any material into the environment, actions, activities, circumstances, conditions, events, incidents, or contractual obligations which may be reasonably anticipated to give rise to any common law environmental liability or any liability of or attaching to the Business or Assets under Environmental Laws and neither Seller nor either Parent has received any notice with respect to any of the foregoing, nor is any Action pending or, to the knowledge of Seller or either Parents, threatened in connection with any of the foregoing.
- (d) None of the Parents or Seller, or their respective predecessors, has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any substance, including, without limitation, any hazardous substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) in a manner that has given or would give rise to liabilities to the Buyer, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorneys' fees, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Solid Waste Disposal Act as amended ("SWDA") or any other Environmental Laws.
- (e) There are no underground storage tanks on or under any real property currently owned, leased or used by Seller or, to the knowledge of Seller or either Parents, previously owned, leased or used by Seller.

5.23. Employee Benefit Plans. (a) The Disclosure Schedule contains a true and complete list of each employee benefit plan (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and each other plan, agreement, program, policy, practice or arrangement providing employee benefits (including without limitation) any stock purchase, stock option, fringe benefit, bonus or incentive, deferred compensation and retirement, pension, annuity, death, assurance, insurance and any employment, collective bargaining, severance or change or control agreements, plans, programs, policies or arrangements) under which any employee or former employee of Seller has any present or future right to benefits for which Seller or any ERISA Affiliate of Seller has any present or future liability, excluding, however, any plans, programs, policies and arrangements which exist to provide benefits mandated by laws (collectively, "Plans"). For purposes of this Section 5.23, "ERISA Affiliate" shall mean any person that, together with Seller, would be or was at any time treated as a single employer under Section 414 of the Code or Section 4001 of ERISA and any general partnership of which Seller is or has been a general partner.

- (b) All contributions required to be made by Seller to any Plan by any applicable laws or by any plan document or other contractual undertaking, and all premiums due from or payable by Seller with respect to insurance policies funding any Plan, before the date hereof have been made or paid in full on or before the final due date thereof and

through the Closing Date will be made or paid in full on or before the final due date thereof. Each Plan that is an employee welfare benefit plan under Section 3(1) of ERISA either (i) is funded through an insurance company contract and is not a "welfare benefit fund" within the meaning of Section 419 of the Code; or (ii) is unfunded. Seller and each Parent have complied, and are now in compliance, in all material respects, with all provisions of ERISA, the Code and all laws and regulations applicable to the Plans. Each Plan has been operated in material compliance with its terms. There is not now, and there are no existing circumstances, that would give rise to, the loss of such qualification or exemption or the imposition of any liability, lien, penalty, or tax on the Assets or Seller under ERISA or the Code with respect to any Plan.

- (c) No employee or former employee of Seller or beneficiary of any such employee or former employee is, by reason of such employee's or former employee's employment with Seller, entitled to receive any benefits, including, without limitation, death or medical benefits (whether or not insured) beyond retirement or other termination of employment as described in Statement of Financial Accounting Standards No. 106, other than (i) death or retirement benefits under a Plan, (ii) deferred compensation benefits accrued as liabilities on the Closing Statement or (iii) continuation coverage mandated under Section 4980B of the Code or other applicable law.
- (d) Seller will be responsible for all liabilities for employee or agent compensation and benefits accrued or otherwise arising out of services rendered prior to the Closing Date or by reason of termination at the Closing Date, including, without limitation, continuation coverage mandated under Section 4980B of the Code or other applicable law. Without limitation of the preceding sentence, on the Closing Date or as soon as administratively practicable thereafter, Seller shall pay all of the persons employed by Seller on or before the Closing Date the full amount to which they may be entitled for any compensation or accrued benefits, including but not limited to accrued bonuses and commissions and severance benefits, if any. No accrued vacation, sick leave or other leave shall carry over to any employment of such employees by Buyer except as provided in Section 4.3.

5.24. Real Property Lease. Seller has delivered to Buyer a true and complete copy of the Real Property Lease identified on Schedule 3.1. Except as set forth on the Disclosure Schedule, with respect to the Real Property Lease:

- (a) the lease is legal, valid, binding and enforceable and in full force and effect as to the Seller and to the best of the Seller's and Parents' knowledge the other party;
- (b) to the Seller's and Parents' knowledge, the lease will continue to be legal, valid, binding, enforceable and in full force and effect on Buyer on identical terms following the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Section 3 above);
- (c) to the Seller's and Parents' knowledge, no party to the lease is in breach or default, and no event has occurred which, with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder;

- (d) there are no disputes, nor to the knowledge of Seller or Parents any threatened disputes, oral agreements or forbearance programs in effect as to the lease; and
- (e) none of the Seller or Parents has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold.

5.25. Complete Disclosure. No representation or warranty made by Seller or Parent in this Agreement, and no exhibit, schedule, statement, certificate or other writing furnished to Buyer by or on behalf of Seller or Parent pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or will contain, any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein and therein not misleading.

6. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller, as follows:

- 6.1. Corporate Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Buyer has full corporate power and authority to carry on its business as now being conducted.
- 6.2. Authorization. Buyer has full corporate power and authority to execute, deliver and perform this Agreement and, to the extent it is a party thereto, the documents to be delivered at Closing (collectively, the "Buyer Agreements") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Buyer Agreements by Buyer and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and no other corporate action or proceeding on the part of Buyer is necessary to authorize the execution and delivery by Buyer of this Agreement or the Buyer Agreements or the consummation by Buyer of the transactions contemplated hereby or thereby or the performance of Buyer's obligations hereunder and thereunder. This Agreement and the Buyer Agreements are duly executed and delivered by Buyer and this Agreement and the Buyer Agreements are legal, valid, and binding obligations of Buyer, enforceable against it in accordance with their terms, subject to applicable laws affecting creditors' rights generally and, as to enforcement, to general principles of equity, regardless of whether applied in a proceeding at law or in equity.
- 6.3. No Violations; No Consents or Approvals Required. Neither the execution or delivery of this Agreement or the Buyer Agreements nor the consummation of the transactions contemplated hereby or thereby will (i) conflict with or violate any provision of the charter or bylaws of Buyer, (ii) conflict with or violate any law, rule, regulation, ordinance, order, writ, injunction, judgment, or decree applicable to Buyer or by which any of its assets or properties are bound or affected, or (iii) violate, conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others (with the giving of notice, the passage of time or otherwise) any rights of termination or cancellation of, or accelerate the performance required by or maturity of, or result in the creation of any security interest, lien, charge or encumbrance on any of its assets or properties pursuant to any of the terms, conditions or provisions of any note, bond, mortgage, indenture, permit, license, franchise, lease, contract, or other instrument or obligation to which

Buyer is a party or by which Buyer or any of its assets or properties is bound or affected, except, in the case of (ii) and (iii) above, such conflicts, violations, breaches, defaults, terminations, cancellations, accelerations, liens, charges or encumbrances that individually or in the aggregate will not have a material adverse effect on the ability of Buyer to consummate the transaction contemplated by this Agreement and the Buyer Agreements and solely in the case of (iii) for such security interests and other rights created as a result of Buyer's financing arrangements entered into in connection with the transactions contemplated by this Agreement. No notice, declaration, report or other filing or registration with, and no waiver, consent, approval or authorization of, any governmental or regulatory authority or instrumentality or any other person is required to be submitted, made or obtained by Buyer in connection with the execution, delivery or performance of this Agreement or the Buyer Agreements and the consummation of the transactions contemplated hereby and thereby.

- 6.4. **Brokers and Finders.** Buyer has not incurred any liability for any brokerage fees, commissions, finders' fees or similar fees or expenses for which Seller or Parents may be liable.

7. COVENANTS

- 7.1. **Access to Information.** Buyer will hold and cause its representatives to hold in strict confidence all documents and information concerning the Business that is not generally available to the public, unless (i) such information is made available to Buyer or its representatives or agents through an independent source and not, to Buyer's knowledge, in contravention of any agreement or obligation to maintain it as confidential, or (ii) Buyer is compelled by legal or administrative process or, in the opinion of its counsel, requirements of law to disclose such information.
- (a) For a period of at least 7 years following the Closing Date, Buyer will retain, at Buyer's sole expense, the books, records and other data of the Business transferred pursuant hereto. During such period, Buyer will afford to Seller, its counsel and accountants, during normal business hours and in a manner so as not to interfere with Buyer's normal business operations, reasonable access to such books, records and other data for legitimate business purposes; provided, however, that Buyer may prohibit or limit access to any information Buyer deems confidential unless and until Buyer shall receive adequate assurances from Seller, its representatives, agents and legal and accounting advisors who are provided access that they will maintain the confidential nature of such information. Following the expiration of such 7-year period, Buyer may dispose of any such books, records or other data; provided, however, that before disposing of any such materials it will first notify Seller and permit Seller, at its sole expense, to remove such materials.
- (b) Buyer shall, at the request of Seller, (i) provide reasonable assistance in the collection of information or documents and (ii) make Buyer's employees available when reasonably requested by Seller in connection with claims or actions brought by or against third parties based upon events or circumstances concerning Retained Liabilities; provided, that Seller's access shall be conducted at reasonable times, and in a manner so as not to interfere with the normal business operations of the

Business as conducted by the Buyer after Closing. Seller shall reimburse Buyer for all reasonable expenses incurred by Buyer in providing said assistance.

- (c) After the Closing, Seller agrees to make available to Buyer for inspection and copying at Buyer's expense, at reasonable times upon request therefor, any records and documents relating to the Business and the Assets retained by Seller which, at the time of such request, are in Seller's possession or control. In addition, Seller and Parents agree to make available to Buyer financial data and other information retained by Seller or Parents relating to the Business and the Assets, and will make available Seller's or Parent's employees, as Buyer may from time to time reasonably request, to permit Buyer to prepare any tax returns and in connection with any governmental examination of tax returns relating to the Business or the Assets for periods from and after the Closing Date; provided, that Seller's access shall be conducted at reasonable times, and in a manner so as not to interfere with the normal business operations of the Business as conducted by the Buyer after the Closing Date. Seller's and Parents' reasonable expenses in connection therewith shall be reimbursed by Buyer.

7.2. Public Announcements. Buyer and Seller will consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by law or any national securities exchange.

7.3. Confidential Information. For a period of two years after the Closing Date, Seller will, and will cause its respective employees and agents, to hold in strict confidence, unless compelled to disclose by judicial order or administrative process, or in the opinion of counsel, requirements of law, all confidential commercial information developed or used in the Business prior to the Closing Date (the "Confidential Information"). Notwithstanding the foregoing, neither Seller nor either Parent shall have any obligation to maintain the confidentiality of any information which: (a) was or is in the public domain other than through an act or failure to act on behalf of Seller; (b) is independently developed by Seller without reference to or the use of any Confidential Information; or (c) is disclosed to Seller on a non-confidential basis by a third party who has a right to do so.

7.4. Competition. Seller and each Parent, jointly and severally, covenant and agree that within the three-year period immediately following the Closing Date, they shall, not directly, indirectly or through any ownership interest in any firm, corporation, partnership, proprietorship or other business engage with third parties in the activities now engaged in by the Business in the geographic areas in which the Business is now conducted, which are set forth on Schedule 7.4; provided, however, that (i) Seller and Parents may own, directly or indirectly, solely as an investment, securities of any person which are publicly traded if Seller and Parents, in the aggregate, do not, directly or indirectly, beneficially own five percent or more of any class of securities of such person, and (ii) Seller and Parents may have such an ownership interest during such three-year period if such ownership arises as a result of the acquisition of a business entity having business activities other than those now engaged in by the Business, and

Seller or either Parent proceeds actively to dispose of those business activities prohibited by this Section.

- 7.5. Transition Services Agreement. At or prior to the Closing, Buyer and Seller shall enter into the Transition Services Agreement, substantially in the form attached as Exhibit 7.5, pursuant to which Seller will provide certain transition services to Buyer.
- 7.6. Name Change. Seller will adopt and file, immediately after the Closing, an amendment to its Articles of Incorporation changing its corporate name to a name not using the terms "Denver Biomedical", "Denver Biomaterials" or "DBI", whether alone or in combination with any other word or term or variations of such word or terms. Following the Closing, Seller shall not do business under, or utilize a trademark or service mark consisting of or confusingly similar to, any of the foregoing names or terms.
- 7.7. Accounts Receivable Collections. Seller will maintain its existing lock-box banking arrangement with respect to cash receipts relating to the Business until the earlier to occur of (a) twelve (12) months following the Closing Date; or (b) the termination of the banking arrangement in its entirety. Seller will arrange for Buyer to receive daily forwarding of cash receipts comprising Assets hereunder.
- 7.8. Accounting for Receivables. Buyer and Seller agree, with respect to receivables collected by Buyer after the Closing Date, payments of receivables that refer to specific invoices will be credited to such invoices and all other collections will be credited to particular customer accounts on the basis of the oldest outstanding receivable.
- 7.9. No Solicitation or Hiring of Transferred Employees. Except as provided by law, for a period of two years after the Closing Date, none of Seller or Parents shall solicit any Transferred Employee to terminate his employment with Buyer or to become an employee of Seller or hire any Transferred Employee.
- 7.10. Payment of Accounts Payable. On or prior to the Closing, Seller shall have made payment on all accounts payable of the Business which are, as of the Closing Date, over 45 days old.
- 7.11. Sales Taxes. Seller shall file within the applicable statutory period all state and local sales tax returns (other than the taxes contemplated by Section 9.2(c)) and remit all associated sales taxes due with respect to the activities of the Business up through the Closing Date. Seller shall deliver to Buyer within thirty (30) days after Closing a Tax Clearance Certificate issued by the Colorado Department of Revenue.
- 7.12. Real Property Lease. Buyer shall cooperate with and assist Seller, including providing financial statements, novation agreements or other related undertakings, in connection with the transfer of the Real Property Lease located at 14998 West 6th Avenue, Building E-700, Golden, Colorado 80401 and the removal of Seller as an obligor under such lease agreement.
- 7.13. Maintenance of Insurance. Parents shall maintain for a period of no less than seven (7) years following the Closing products liability insurance in an amount of no less than \$6,000,000 to cover any claim or suit submitted during such period involving a product manufactured by the Business prior to the Closing Date.

8. CLOSING

- 8.1. **Closing.** The closing of the transactions contemplated by this Agreement ("**Closing**") shall be held at the offices of Holland & Hart LLP, 555 Seventeenth Street, Suite 3200, Denver, Colorado on September 19, 2000 but shall be considered effective as of 12:01 a.m., Central Time, on September 16, 2000, (the "**Closing Date**").
- 8.2. **Seller's Closing Obligations.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:
- (a) **Bills of Sales.** General Conveyances, Assignments and Bills of Sale in the forms attached hereto as **Exhibit 8.2(a)** conveying title to the personal property to be sold and transferred hereunder, subject only to exceptions permitted by this Agreement and any such other instruments of conveyance as counsel for Buyer may reasonably deem necessary or desirable to effect or evidence the sale of the Assets;
 - (b) **Specific Assignments.** Specific assignments of the Assumed Executory Contracts and the Intellectual Property that Buyer may reasonably request to assure their continuity, together with any consents to such assignments that may have been obtained and any application files in the possession or control of Seller or its attorneys that concern the Intellectual Property;
 - (c) **Receipts and Other Instruments of Conveyance.** Receipts for the Cash Consideration and such other instruments as counsel for Buyer may reasonably deem necessary or desirable to effect or evidence the transfers contemplated hereby;
 - (d) **Resolutions.** Copies of duly executed resolutions of Seller's and each Parent's directors and shareholders approving the execution, delivery and performance of this Agreement, the amendment of Seller's Articles of Incorporation and the other instruments contemplated hereby, certified by Seller's and Parent's respective corporate secretary or assistant secretary;
 - (e) **Tax Withholding.** Such documentation as may be reasonably required by Buyer to relieve Buyer of the obligation to withhold tax pursuant to Code Section 1445;
 - (f) **Additional Agreements.** Executed copies of the Transition Services Agreement;
 - (g) **Release.** A release executed by Fleet Capital Corporation, a Rhode Island corporation ("**Fleet**"), releasing all security interests held by Fleet in the Assets; and
 - (h) **Legal Opinion.** The legal opinion of Bracewell & Patterson, L.L.P., counsel to Seller, addressed to Buyer, with respect to matters reasonably requested by Buyer.
- 8.3. **Deliveries of Buyer.** At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:
- (a) **Payment.** The Cash Consideration in the manner described in Section 2.4 hereof;
 - (b) **Assumption Agreement.** Duly executed Assumption Agreements in the form attached hereto as **Exhibit 8.3(b)** evidencing the obligations and liabilities assumed by Buyer hereunder;

- (c) Other Instruments of Assumption. Any such other instruments as counsel for Seller may reasonably deem necessary or desirable to effect or evidence the assumption of liabilities contemplated hereby;
- (d) Resolutions. Copies of duly executed resolutions of Buyer's directors approving the execution, delivery and performance of this Agreement and the other instruments contemplated hereby, certified by Buyer's secretary or assistant secretary;
- (e) Additional Agreements. Executed copies of the Transition Services Agreement; and
- (f) Legal Opinion. The legal opinion of Holland & Hart LLP, counsel to Buyer, addressed to Seller, with respect to matters reasonably requested by Seller.

9. PRORATIONS AND EXPENSES

- 9.1. Proration. Rents, personal property taxes, real property taxes, transfer taxes, and payroll taxes including, without limitation, accruals or prepayments thereof (all as individually defined below) shall be prorated between Buyer and Seller as provided in this Article 9 in the Closing Statement.
- 9.2. Apportionment of Charges, Taxes and Payroll.
 - (a) Rents Under Leases. Rents under leases shall be apportioned between Buyer and Seller as of the Closing Date, with Buyer bearing only the expense of that portion of such rents that the number of days subsequent to the Closing Date bears to the total number of days covered by the applicable monthly payment.
 - (b) Real and Personal Property Taxes. Real and personal property taxes having a tax listing (lien) date in 2000 shall be paid by Seller and real and personal property taxes having a tax listing (lien) date in 2000 shall be apportioned with Buyer bearing only the expense of that portion of tax that the number of days in the period following the Closing Date bears to the total number of days in the taxing period.
 - (c) Transfer Taxes. The parties shall equally share the cost of any transfer, sales, documentary, registration, stamp, or other similar tax (the "Transfer Taxes") payable by reason of the transfer and sale of property contemplated hereby. The party which is obligated by law to make any filing with respect to Transfer Taxes shall, at its own expense, file all necessary returns or other documents required with respect to Transfer Taxes.
 - (d) Payroll Taxes. All foreign, Federal and state withholding, Federal Insurance Contribution Act, and Federal and state employment and unemployment taxes, levied or imposed upon or in connection with the employees of the Business on or prior to the Closing Date shall be borne and paid or accrued on the Closing Statement by Seller and all such taxes so levied or imposed upon or in connection with Transferred Employees after the Closing Date shall be borne and paid by Buyer.
 - (e) Payroll Apportionment. Payrolls owed for employment of employees of the Business on or prior to the Closing Date and employees other than Transferred Employees after the Closing Date shall be borne and paid by Seller. Payrolls of Transferred Employees for employment by Buyer after the Closing Date shall be borne and paid by Buyer.

- 9.3. Parties to Bear Own Expenses. Except as otherwise specifically provided by this Agreement, each party shall bear and pay its own expenses and taxes incurred in connection with the transactions referred to in this Agreement.

10. SURVIVAL OF REPRESENTATION AND WARRANTIES; INDEMNIFICATION

- 10.1. Survival. The representations and warranties of Seller; herein and in the documents and instruments to be delivered by Seller as contemplated hereby, other than those contained in Sections 5.1, 5.2, 5.5, 5.16, 5.20, 5.21, 5.22 and 5.23, shall survive until the first anniversary of the Closing Date; and the representations and warranties of Seller contained in Sections 5.1, 5.2, 5.5, 5.16, 5.20, 5.21, 5.22 and 5.23 shall survive for the maximum period permitted by applicable law. Buyer's representations and warranties herein and in the documents and instruments to be delivered by Buyer as contemplated hereby shall survive until the first anniversary of the Closing Date. The periods of survival of the representations and warranties as contemplated by this Section 10.1 are referred to herein as the "Survival Period." The liabilities of the parties under their respective representations and warranties shall expire as of the expiration of the applicable Survival Period; provided, however, that such expiration shall not include, extend or apply to any representation or warranty, the breach of which shall have been asserted in a written notice before such expiration. The covenants and agreements of the parties herein and in the other documents and instruments contemplated hereby shall survive the Closing.
- 10.2. Indemnification by Seller. Seller and each Parent, jointly and severally, hereby agree, effective as of the Closing Date, to indemnify, save and hold harmless Buyer, its permitted assigns, and all of their respective officers, directors, stockholders, agents and employees from and against any and all damages, liabilities, losses, claims, deficiencies, penalties, interest, expenses, fines, assessments, charges or costs, including reasonable attorney's fees and court costs (collectively, the "Damages") arising from (a) the Retained Liabilities, (b) the breach in any material respect of any covenant of Seller contained herein or in any Seller Agreement, (c) any inaccuracy in or any breach of any representation or warranty of Seller or either Parent under this Agreement, (d) any liability that is not an Assumed Liability (including any liability of Seller or Parents that becomes a liability of Buyer under any common law doctrine of de facto merger or successor liability) and (e) any liability asserted by Allegiance Healthcare, Inc. ("Allegiance"), its officers, directors, stockholders, successors, assigns or affiliates in connection with the proposed acquisition by Allegiance or its designee of the Business and Assets.
- 10.3. Indemnification by Buyer. Buyer hereby agrees, effective as of the Closing Date, to indemnify, save and hold harmless Seller and Parents, their permitted assigns and all of their respective officers, directors, stockholders, agents and employees from and against any Damages arising from (a) the Assumed Liabilities after the Closing Date, (b) the breach in any material respect of any covenant of Buyer contained herein or in any Buyer Agreement, (c) any inaccuracy in or any breach of any representation or warranty of Buyer under this Agreement and (d) in the event that Seller is not released from the guaranty and obligations under the real property lease described in Section 7.12, any failure by Buyer to observe and perform the terms and conditions of such lease after the Closing Date.

10.4. Limitation of Liability.

- (a) **Limitations on the Assertion of Claims.** No claim for Damages can be made under Sections 10.2 or 10.3 of this Agreement against Seller, Parents, or Buyer after the expiration of the applicable Survival Period.
- (b) **Deductible.** None of Seller, Parents nor Buyer shall be liable for claims under Section 10.2 based upon a breach of any representation or warranty set forth in this Agreement unless such claims in the aggregate exceed Fifty Thousand Dollars (\$50,000.00), excluding interest and costs (the "Deductible") in which event they shall be liable only for the excess over such Deductible. Notwithstanding the foregoing, Seller's and Parents', on the one hand, or Buyer's on the other hand, respective aggregate maximum liability for claims under Section 10.2 will not exceed the Purchase Price; provided, however that (i) any liability for claims under Section 10.2 which is based upon a breach of any representation or warranty set forth in Section 5.1, 5.2, 5.5, 5.16, 5.20, 5.21, 5.22 or 5.23 shall not be limited by this Section 10.4 as to maximum amount; and (ii) in the event that Buyer shall be required to indemnify Seller or Parent pursuant to Section 10.3(d) of this Agreement, such obligation shall not be subject to the Deductible set forth herein.
- (c) Neither Seller nor Parents shall be liable to indemnify Buyer with respect to items that have resulted in a reduction in the Purchase Price pursuant to Article 2 hereof and such amounts shall not be included in any calculation made pursuant to Section 10.4(b) hereof.
- (d) Buyer will take prudent action to attempt to avoid or mitigate and not to increase any loss or liability to Seller or Parents under this Agreement; provided however that Buyer will not be required to expend its own funds to avoid, mitigate or limit Seller's or Parents' liability.
- (e) Neither Buyer on the one hand, nor Seller or Parents on the other hand, shall be liable to the other for indirect, special, incidental, consequential or punitive damages; provided, however, that a party may be liable for such damages if and to the extent that such damages arise out of the defense or other activities of an Indemnifying Party in connection with an indemnification claim under this Agreement, including any efforts to avoid, contest, resist, defend, appeal or comprise a demand, claim or action brought by a third party and the delays associated therewith.
- (f) For purposes of this Section 10, all Damages shall be computed net of (i) any actual income tax benefit resulting therefrom to the indemnified party, (ii) any insurance proceeds actually received, net of tax effects, from insurance for the event or occurrence giving rise to the Damages, and (iii) any amounts actually received, net of tax effects, from any third parties based on claims related to the event or occurrence giving rise to the Damages that the indemnified party has against such third parties which reduce the Damages that would otherwise be sustained; provided, however, that, in all cases, the timing of the receipt or realization of income tax benefits, insurance proceeds or recoveries from third parties, the amount of increased costs of insurance arising from the payment or collection of such insurance proceeds, and the costs of collection shall be taken into account in

determining the amount of reduction of Damages. Each indemnified party agrees to use its reasonable best efforts to pursue any claims related to the event giving rise to the Damages or rights it may have against any third party which would materially reduce the amount of Damages otherwise incurred by such indemnified party. No indemnified party shall be required to pursue recovery under its own respective insurance policies prior to seeking indemnification from the other party.

- 10.5. Notice and Right to Defend. Each party hereto agrees to give prompt notice to the other of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder. The indemnifying party shall have the right to assume the defense of any third-party claim, suit, action or proceeding in respect of which indemnity hereunder is sought and such indemnity may be sought hereunder by giving prompt notice to the indemnifying party; provided, however, that (a) the indemnified party shall at all times have the right, at its option and expense, to participate fully therein and, if such third party is a significant customer of the indemnified party, the indemnified party shall have the right to approve, such approval not to be unreasonably withheld or delayed, all material actions taken in such defense or settlement, (b) for so long as the indemnifying party is conducting the defense of the third-party claim in accordance with this Section 10, the indemnified party will not consent to, permit the entry of any judgment, or enter into any settlement with respect to any third-party claim without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed, and (c) if the indemnifying party does not proceed diligently to defend the claim within 30 days after receipt of such notice, the indemnified party shall have the right, but not the obligation, to undertake the defense of any such claim for the account of and at the risk of the indemnifying party and the indemnifying party shall be bound by any defense or settlement that the indemnified party may make as to such claim. The parties shall cooperate in defending any such third-party claim.
- 10.6. Remedies Exclusive. The remedies provided in this Article 10 shall be exclusive as to the matters covered hereby and shall preclude assertion by an indemnified party of any other rights or the seeking of any and all other remedies against an indemnifying party for claims based on matters addressed in this Article 10 with respect to any breach of a representation or warranty made by any party in this Agreement.
- 10.7. Contribution. In connection with the fulfillment of indemnification obligations by an indemnifying party under this Agreement, the indemnified party hereby agrees to assign to the indemnifying party, to the extent permitted by law and contract, any rights of contribution to which the indemnified party may be entitled, and to subrogate the indemnifying party to such rights of the indemnified party, against any other person, to the extent of any indemnification payments made by the indemnifying party less costs then already incurred by the indemnified party with respect to pursuing such rights of contribution, which arise out of the matter for which the indemnifying party provided indemnification under this Agreement; provided, however, that the indemnified party shall be held harmless by the indemnifying party to the extent such assignment or subrogation is prohibited by law or contract. The indemnified party shall execute any document which the indemnifying party may reasonably request in connection with any such assignment or subrogation, and the indemnifying party shall terminate such

assignment or subrogation, other than with respect to indemnification payments already made by an indemnifying party, and reinstates in the indemnified party its prior rights to contribution against other parties when or to the extent that the indemnifying party ceases to provide continuing indemnification to the indemnified party for such matter.

11. MISCELLANEOUS COVENANTS AND AGREEMENTS

11.1. Termination of Letter of Intent. Upon the Closing, the Letter of Intent dated August 21, 2000, as amended, shall terminate and the parties shall have no further obligations pursuant thereto.

11.2. Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when received, whether by personal delivery, nationally recognized overnight courier service or first class registered mail, return receipt requested, or by facsimile promptly confirmed by first class mail, in each case addressed to the receiving parties at the addresses set forth below or at such other address or addresses as any party may from time to time specify by notice to the other party given as aforesaid.

If to Seller or to Parents:

2828 N. Crescent Ridge Drive
The Woodlands, TX 77381
Att: President

Copies to:

Lisa Bossard Funk
Attorney-at-Law PLLC
2828 N. Crescent Ridge Drive
The Woodlands, TX 77381

Bracewell & Patterson, L.L.P.
711 Louisiana, Suite 2900
Houston, TX 77002
Att: Margaret B. Symonds

If to Buyer:

DBMI Holdings, Inc.
14998 W. Sixth Avenue, Building B-700
Golden, CO 80401
Att: Bonnie Vivian

Copies to:

Holland & Hart LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202
Att: Betty C. Arkell

11.3. Bulk Sales Laws. Buyer waives compliance by Seller with the applicable Bulk Sales Laws of Texas and Colorado and any other state in which the Uniform

Commercial Code is adopted or similar laws in any jurisdiction in which the Business is conducting business.

11.4. **Further Assurances.** At any time after the Closing, and without additional cost or expense to Seller or Parents, Seller or Parents will execute and deliver such other and further instruments of conveyance, transfer and confirmation, and take such other action as Buyer may reasonably request in order to more effectively convey, evidence, confirm and transfer to Buyer the property transferred hereunder. After the Closing, Buyer shall at Seller's request and without further cost or expense to Buyer, execute and deliver to Seller such other instruments of assumption, and take such other action as Seller may reasonably request to more effectively evidence the assumption of Assumed Liabilities by Buyer.

11.5. **Miscellaneous.**

- (a) **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, together with the agreements, certificates and other documents referred to herein or the form of which are attached as Exhibits or Schedules hereto, constitute a single agreement and set forth the entire understanding of the parties with respect to the subject matter hereof, supersede all prior agreements, covenants, arrangements, letters, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party, and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement signed by the parties hereto. The Schedules and Exhibits to this Agreement shall be satisfactory to Buyer and Seller in form and content.
- (b) **No Waiver.** The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way affect the validity of this Agreement or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver or any other or subsequent breach.
- (c) **Assignment.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, provided that neither party may transfer or assign its rights or delegate its performance hereunder without the prior written consent of the other party.
- (d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado (other than its conflict of laws provisions).
- (f) **Knowledge.** Unless the text of this Agreement expressly specifies otherwise, knowledge of the Seller or either Parent for purposes of this Agreement shall mean the actual knowledge of any of Ms. Bonnie Vivian and Ms. Lisa Bossard Funk and Messrs. Jim Connelly, Robert Kleinert, Tom Early, Dan Cox, or Tod Hammond.
- (g) **No Third Party Beneficiaries.** Nothing in this Agreement shall entitle any person other than the parties hereto and their respective successors and assigns permitted hereby to any claim, cause of action, remedy or right of any kind.

- (h) **Jurisdiction.** Seller and each Parent hereby agree that in the instance of any claim, action, suit or proceeding, other than (i) any claim, action, suit or proceeding brought by Buyer to remove any action initiated by Seller or either Parent; or (ii) any other claim, action, suit or proceeding brought in response to any action originally initiated by Seller or either Parent, that neither Seller nor Parents will object to Buyer's choice of venue in the State of Colorado; provided, however, that Seller and Parents expressly retain the absolute right to initiate any proceeding in the jurisdiction or venue of their choice.

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09/19/2006 14:04 FAX 303 473 2720

HOLLAND & HART LLP

003

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

DENVER BIOMEDICAL, INC.

By: [Signature]
Name: JAMES G. CANNALLY, JR.
Title: VP FINANCE

LIFESTREAM INTERNATIONAL, INC.

By: [Signature]
Name: JAMES G. CANNALLY, JR.
Title: VP FINANCE

LIFESTREAM INTERNATIONAL HOLDINGS, INC.

By: [Signature]
Name: JAMES G. CANNALLY, JR.
Title: VP FINANCE

DEMI HOLDINGS, INC.

By: _____
Name: _____
Title: _____

SYNCHRONY, LLC
HOUSTON, TEXAS
Asset Purchase Agreement

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

DENVER BIOMEDICAL, INC.

By: _____
Name: _____
Title: _____

LIFESTREAM INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

LIFESTREAM INTERNATIONAL
HOLDINGS, INC.

By: _____
Name: _____
Title: _____

DBMI HOLDINGS, INC.

By: Bonnie + Vivian
Name: Bonnie + Vivian
Title: President

SYMOMBV058178.000024
HOUSTON\1161996.05

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DENVER BIOMEDICAL, INC.

Schedule 1.3
ASSETS

(a) Machinery and Equipment					
See attached Schedule 1.2(a)					
(b) Accounts Receivable					
See attached Schedule 1.2(b)					
(c) Inventory					
See attached Schedule 1.2(c)					
(d) Supplies					
Not applicable					
(e) Prepaid Expenses					
See attached Schedule 1.2(e)					
(f) Intellectual Property					
<i>Patent</i>	<i>Serial #</i>	<i>Filing Date</i>	<i>Registr. #</i>	<i>Issue Date</i>	<i>Status</i>
Biopsy Needles	09/069,783	4/29/98	6,093,154	7/23/00	Active
Device for Paracentesis and Thoracentesis	08/583,813	1/5/96	5,997,486	12/7/99	Active
Device for Paracentesis and Thoracentesis		1/15/96	5,725,506	3/10/98	Active
Treatment Method for Pleural Effusion	08/251,692	5/31/94	5,484,401	1/16/96	Active
Body Build transfer device	06/936,888	12/2/86	4,850,955	7/23/89	Active (assigned to DBI's predecessor on 6/25/90)
<i>Trademark</i>	<i>Serial #</i>	<i>Filing Date</i>	<i>Registr. #</i>	<i>Issue Date</i>	<i>Status</i>
Denver (US)	73503092	10/23/84	1,450,304	3/4/87	Active
Denver (Japan)	52363	1989	4091499	12/12/97	Active
	52364	1989	4091500	12/12/97	Active
Denver (Brazil)			813433875		Pending republication
ParaPro	73120984	6/20/96	2,188,396	9/1/96	Active
Pleurx	75279136	4/22/97	2,174,010	7/14/98	Active

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DENVER BIOMEDICAL, INC.

(j) Permits		
Issued From	Type of License or Certificate	Dates
Food and Drug Administration	Annual Registration for Device Establishment #1717671	Expires 12/31/2000 (not assignable)
State of Colorado Board of Pharmacy	Registration #3368	2/7/00 - 12/31/00 (not assignable)
Colorado Department of Revenue	Sales Tax License 23-34-349-0000	12/31/99 (not assignable)
Santé Health Canada	Pleurx Pleural Catheter and Drainage Accessories #545 paraPRO Paracentesis Needle Kits #40 Ascites Shunt #12457 Peritoneous Access Kit #12459 Pleural Effusion Shunt #12461	(not assignable) 1/13/99 7/31/98 12/9/82 3/11/97 11/7/88
KBMA	CE Certifications: 77189TE01 (Ascites Shunts) 77189TE02 (Pleural Effusion Shunts) 77189TE03 (Pleurx Pleural Catheter) 77189CE01 (Accessories for Pleural Effusion, Ascites Shunting, Pleural Catheters) 77189CE02 (Accessories for Ascites Shunting, Pleural Effusion Shunts & Catheters) 77189CE03 (Ascites Shunts & Accessories) 77189CE04 (Pleural Effusion Shunts and Catheters and Accessories) 89080CE01 (Paracentesis Needles and Accessories)	(transferable upon application) 5/1/98 - 5/1/01 5/1/98 - 5/3/01 5/1/98 - 5/1/01 5/1/98 - 5/1/01 5/1/98 - 5/1/01 5/1/98 - 5/1/01 5/1/98 - 5/1/01 4/1/98 - 4/1/01
Network Solutions (InterNIC)	Domain names: Denverbio.com Denverbiomedical.com	(transferable upon application)
(m) Seller's Claims		
None		
(n) Vehicles		
None		
(o) Phone Numbers, etc.		
303-279-7500 (phone)	303-279-7575 (fax)	800-824-8454
303-570-6671 (mobile)	303-717-0458 (mobile)	303-748-7077 (mobile)
denverbio.com	denverbiomedical.com	

September 19, 2000

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