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# SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

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## FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the fiscal quarter ended June 30, 2000

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-5110

### **BERGEN BRUNSWIG CORPORATION**

(Exact name of registrant as specified in its charter)

#### **New Jersey**

(State or other jurisdiction of  
incorporation or organization)

**22-1444512**

(I.R.S. Employer  
Identification No.)

#### **4000 Metropolitan Drive, Orange, California**

(Address of principal executive offices)

**92868-3510**

(Zip Code)

Registrant's telephone number, including area code

**(714) 385-4000**

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Title of each class of  
Common Stock

Number of Shares Outstanding  
July 31, 2000

Class A Common Stock –  
par value \$1.50 per share

134,732,741

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## **BERGEN BRUNSWIG CORPORATION**

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# PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

### **BERGEN BRUNSWIG CORPORATION** **CONSOLIDATED BALANCE SHEETS** **JUNE 30, 2000 AND SEPTEMBER 30, 1999** **(dollars in thousands)** **(Unaudited)**

-- ASSETS --	June 30, 2000	September 30, 1999
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents.....	\$ 191,504	\$ 116,354
Accounts and notes receivable, less allowance for doubtful receivables: \$117,293 at June 30, 2000 and \$96,793 at September 30, 1999.....	1,100,905	1,292,609
Inventories.....	2,085,463	1,681,538
Income taxes receivable.....	9,251	37,918
Deferred income taxes.....	57,248	-
Prepaid expenses.....	17,847	17,066
Net assets of discontinued operations.....	297,783	684,447
Total current assets.....	3,760,001	3,829,932
<b>PROPERTY - at cost:</b>		
Land.....	17,211	9,541
Buildings and leasehold improvements.....	114,375	106,998
Equipment and fixtures.....	214,804	222,625
Total property.....	346,390	339,164
Less accumulated depreciation and amortization.....	134,321	145,873
Property - net.....	212,069	193,291
<b>OTHER ASSETS:</b>		
Goodwill - net.....	1,171,870	1,210,770
Investments.....	19,718	9,553
Noncurrent receivables.....	18,657	18,960
Deferred income taxes.....	32,459	15,229
Deferred charges and other assets.....	140,318	121,717
Total other assets.....	1,383,022	1,376,229
<b>TOTAL ASSETS.....</b>	<b>\$ 5,355,092</b>	<b>\$ 5,399,452</b>

See accompanying Notes to Consolidated Financial Statements.

**BERGEN BRUNSWIG CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**  
**JUNE 30, 2000 AND SEPTEMBER 30, 1999**  
(dollars in thousands)  
(Unaudited)

- - LIABILITIES AND SHAREOWNERS' EQUITY - -	June 30, 2000	September 30, 1999
CURRENT LIABILITIES:		
Accounts payable.....	\$ 1,987,242	\$ 1,586,409
Accrued liabilities.....	255,690	202,553
Customer credit balances.....	166,595	170,594
Deferred income taxes.....	-	56,797
Current portion of long-term debt.....	273,925	544,260
Current portion of other long-term obligations.....	1,364	1,366
Total current liabilities.....	2,684,816	2,561,979
Long-term debt, net of current portion.....	1,069,992	993,344
Other long-term obligations, net of current portion.....	31,092	48,639
Total long-term obligations.....	1,101,084	1,041,983
COMPANY-OBLIGATED MANDATORILY REDEEMABLE PREFERRED SECURITIES OF SUBSIDIARY TRUST HOLDING SOLELY DEBT SECURITIES OF THE COMPANY.....	300,000	300,000
SHAREOWNERS' EQUITY:		
Capital stock:		
Preferred - authorized: 3,000,000 shares; issued: none.....	-	-
Class A Common - authorized: 300,000,000 shares; issued: 137,844,469 shares at June 30, 2000 and 137,316,182 shares at September 30, 1999.....	206,767	205,974
Paid-in capital.....	820,985	818,564
Accumulated other comprehensive income.....	(275)	235
Retained earnings.....	266,928	495,930
Total.....	1,294,405	1,520,703
Treasury shares at cost: 3,100,673 shares at June 30, 2000 and 3,110,671 shares at September 30, 1999.....	(25,213)	(25,213)
Total shareowners' equity.....	1,269,192	1,495,490
TOTAL LIABILITIES AND SHAREOWNERS' EQUITY.....	\$ 5,355,092	\$ 5,399,452

See accompanying Notes to Consolidated Financial Statements.

**BERGEN BRUNSWIG CORPORATION**  
**STATEMENTS OF CONSOLIDATED EARNINGS**  
**FOR THE THREE MONTHS AND NINE MONTHS ENDED**  
**JUNE 30, 2000 AND 1999**  
(in thousands except per share amounts)  
(Unaudited)

	<b>THREE MONTHS</b>		<b>NINE MONTHS</b>	
	<b>2000</b>	<b>1999</b>	<b>2000</b>	<b>1999</b>
Consolidated earnings:				
Net sales and other revenues:				
Excluding bulk shipments to customers' warehouses	\$ 4,805,443	\$ 4,148,248	\$ 13,888,268	\$ 11,920,283
Bulk shipments to customers' warehouses	993,010	1,061,103	3,109,046	2,839,032
Total net sales and other revenues	5,798,453	5,209,351	16,997,314	14,759,315
Costs and expenses:				
Cost of sales	5,479,143	4,940,049	16,062,786	14,126,732
Distribution, selling, general and administrative expenses	245,607	186,109	717,079	421,414
Total costs and expenses	5,724,750	5,126,158	16,779,865	14,548,146
Operating earnings from continuing operations	73,703	83,193	217,449	211,169
Net interest expense	31,974	17,865	80,627	37,449
Earnings from continuing operations before taxes on income and distributions on preferred securities of subsidiary trust	41,729	65,328	136,822	173,720
Taxes on income from continuing operations	18,490	28,012	61,935	71,739
Earnings from continuing operations before distributions on preferred securities of subsidiary trust	23,239	37,316	74,887	101,981
Distributions on preferred securities of subsidiary trust, net of income tax benefit	(3,526)	(1,350)	(10,578)	(1,350)
Earnings from continuing operations	19,713	35,966	64,309	100,631
Discontinued operations, net of income tax benefit:				
Loss from operations	(8,199)	(3,181)	(20,850)	(1,521)
Loss on dispositions	(250,962)	-	(250,962)	-
Net earnings (loss)	\$ (239,448)	\$ 32,785	\$ (207,503)	\$ 99,110
Earnings (loss) per share:				
Basic:				
Continuing operations	\$ .15	\$ .29	\$ .48	\$ .89
Discontinued operations:				
Loss from operations	(.06)	(.03)	(.15)	(.01)
Loss on dispositions	(1.87)	-	(1.87)	-
Net earnings (loss)	\$ (1.78)	\$ .26	\$ (1.54)	\$ .88
Diluted:				
Continuing operations	\$ .15	\$ .28	\$ .48	\$ .88
Discontinued operations:				
Loss from operations	(.06)	(.02)	(.15)	(.01)
Loss on dispositions	(1.87)	-	(1.87)	-
Net earnings (loss)	\$ (1.78)	\$ .26	\$ (1.54)	\$ .87
Weighted average number of shares outstanding:				
Basic	134,507	125,935	134,417	112,377
Diluted	134,519	127,007	134,491	113,866
Cash dividends declared per share of Class A Common Stock	\$ .010	\$ .075	\$ .160	\$ .150

See accompanying Notes to Consolidated Financial Statements.

**BERGEN BRUNSWIG CORPORATION**  
**STATEMENTS OF CONSOLIDATED CASH FLOWS**  
**FOR THE NINE MONTHS ENDED**  
**JUNE 30, 2000 AND 1999**  
(in thousands)  
(Unaudited)

	2000	1999
<b>Operating Activities</b>		
Earnings from continuing operations	\$ 64,309	\$ 100,631
Adjustments to reconcile earnings from continuing operations to net cash flows from operating activities:		
Provision for doubtful receivables	53,546	10,119
Depreciation and amortization of property	34,012	19,312
Loss on dispositions of property	570	656
Amortization of intangible assets	37,998	12,269
Deferred compensation	3,959	2,726
Deferred income taxes	1,483	10,732
Effects of changes on:		
Receivables	(190,535)	(108,105)
Inventories	(403,925)	(650,832)
Income taxes receivable/payable	28,667	40,212
Prepaid expenses and other assets	(1,336)	(27,531)
Accounts payable	400,833	438,810
Accrued liabilities	82,033	22,115
Customer credit balances	(3,999)	37,388
Net cash flows from operating activities	107,615	(91,498)
<b>Investing Activities</b>		
Property acquisitions	(61,095)	(21,077)
Net proceeds from sale of accounts receivable	328,996	-
Acquisition of businesses, less cash acquired	-	(46,222)
Other	(10,799)	1,235
Net cash flows from investing activities	257,102	(66,064)
<b>Financing Activities</b>		
Net revolving unsecured bank loan activity	(249,717)	41,185
Net commercial paper activity	(692,891)	535,600
Net revolving secured bank loan activity	55,000	-
Proceeds from secured bank term loans, net of issuance costs	668,000	-
Proceeds from issuance of trust preferred securities, net of issuance costs	-	290,405
Redemption of senior subordinated notes	-	(16,881)
Repayment of secured bank term loan	(500)	-
Repayment of other obligations	(16,041)	(297,155)
Distributions paid on trust preferred securities	(17,550)	(2,210)
Shareowners' equity transactions:		
Exercise of stock options and issuance of restricted shares	860	6,730
Employee stock purchase plan	2,353	-
Cash dividends paid on Common Stock	(21,499)	(25,975)
Net cash flows from financing activities	(271,985)	531,699
Discontinued operations	(17,582)	(339,793)
Net increase in cash and cash equivalents	75,150	34,344
Cash and cash equivalents at beginning of period	116,354	79,003
Cash and cash equivalents at end of period	\$ 191,504	\$ 113,347
<b>Supplemental Cash Flow From Continuing Operations Disclosures</b>		
Cash paid during the period for:		
Interest	\$ 142,166	\$ 42,169
Income taxes - net of refunds	21,093	19,106

See accompanying Notes to Consolidated Financial Statements.

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

#### **1. Basis Of Presentation**

Bergen Brunswig Corporation, a New Jersey corporation formed in 1956, and its subsidiaries (collectively, the "Company") is a diversified drug and healthcare distribution organization. The Company is one of the nation's largest wholesalers of pharmaceuticals, medical-surgical supplies, and specialty healthcare products to the managed care and retail pharmacy markets, and also distributes pharmaceuticals to long-term care and seriously ill patients. The Company provides product distribution, logistics, pharmacy management programs, consulting services, and Internet fulfillment services designed to reduce costs and improve patient outcomes across the entire healthcare spectrum.

The consolidated financial statements include the accounts of the Company, after elimination of the effect of intercompany transactions and balances.

The accompanying unaudited interim consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for reporting on Form 10-Q and do not include all of the information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The accompanying unaudited interim consolidated financial statements should be read in conjunction with the audited Consolidated Financial Statements and Notes to Consolidated Financial Statements contained in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1999. Certain reclassifications have been made in the consolidated financial statements and notes to conform to fiscal 2000 presentations.

The preparation of the Company's consolidated financial statements in conformity with GAAP necessarily requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet dates and the reported amounts of revenue and expense during the reporting periods. Actual results could differ from these estimates and assumptions.

As discussed more thoroughly in Note 2, Bergen Brunswig Medical Corporation ("BBMC") and Stadtlander Operating Company, L.L.C. ("Stadtlander") are presented as discontinued operations in the accompanying Consolidated Financial Statements and Notes thereto.

In the opinion of management of the Company, the accompanying unaudited interim consolidated financial statements reflect all adjustments necessary for a fair statement of the results of the Company and its subsidiaries for the periods shown and such adjustments are of a normal recurring nature. Results of operations for the first nine months of fiscal 2000 are not necessarily indicative of results to be expected for the full fiscal year or any other fiscal period.

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

#### **2. Discontinued Operations**

On June 26, 2000, the Company announced that it had entered into a definitive agreement to sell the stock of BBMC to Allegiance Corporation, a subsidiary of Cardinal Health, Inc., for approximately \$181 million in cash before retention of certain liabilities and subject to post-closing accounting adjustments. The required waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, expired on July 28, 2000. If all other regulatory approvals and various closing conditions are satisfied in a timely manner, the transaction is expected to close in August 2000. The net proceeds from this divestiture will be used to pay down the \$200 million interim term loan maturing in October 2001 (See Note 7).

On July 5, 2000, the Company announced that it had entered into a definitive agreement to sell the specialty pharmacy assets of Stadtlander to ProCare Pharmacy, Inc., a subsidiary of CVS Corporation, for approximately \$124 million in cash. The transaction is structured as a sale of assets and is expected to be completed in early September 2000. The corrections division of Stadtlander, that portion of the business that provides pharmaceuticals to prison inmate populations, is not included in the sale, but management is seeking potential buyers. The net proceeds from the specialty pharmacy divestiture, the net proceeds from the future sale of Stadtlander's corrections business, and expected tax benefits to be realized from the Stadtlander divestitures are expected to be used to further reduce debt and invest in the continuing operations of the Company.

The Company has reclassified both BBMC (which formerly comprised the substantial majority of the Other Businesses segment) and the Stadtlander business segment as discontinued operations in the accompanying Consolidated Financial Statements.

The loss from discontinued operations includes results through June 30, 2000 (including interest expense allocations based on the expected cash proceeds from the sale of the two businesses and the average bank interest rates incurred during the periods), net of income taxes. Discontinued operations for the three and nine-month periods ended June 30, 2000 and 1999 are as follows:

<i>In thousands</i>	<b>Three Months</b>		<b>Nine Months</b>	
	<b>2000</b>	<b>1999</b>	<b>2000</b>	<b>1999</b>
Net sales and other revenues	\$ 280,820	\$ 293,967	\$ 873,816	\$ 772,782
Costs and expenses	286,625	294,880	889,774	764,339
Operating earnings (loss)	(5,805 )	(913 )	(15,958 )	8,443
Net interest expense	7,498	4,179	18,101	10,457
Loss before income tax benefit	(13,303 )	(5,092 )	(34,059 )	(2,014 )
Income tax benefit	(5,104 )	(1,911 )	(13,209 )	(493 )
Loss from operations	\$ (8,199 )	\$ (3,181 )	\$ (20,850 )	\$ (1,521 )

**BERGEN BRUNSWIG CORPORATION****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(UNAUDITED)**

The Company recognized a loss on the pending dispositions of BBMC and Stadtlander of approximately \$251 million, net of income tax benefits of approximately \$132 million, in the three months ended June 30, 2000. Substantially all of the loss is related to the non-cash write-off of goodwill. Also included in the loss from dispositions are estimated operating losses of BBMC and Stadtlander, including interest expense allocations, from July 1, 2000 through the anticipated transaction closing dates. The loss on dispositions at June 30, 2000 is detailed as follows:

*In thousands*

Net assets in excess of estimated net proceeds of sale	\$ (369,466 )
Estimated future operating results through transaction closing dates	(8,536 )
Write-off of unamortized debt financing costs	<u>(5,394 )</u>
Pre-tax loss on dispositions	(383,396 )
Income tax benefits	<u>(132,434 )</u>
Net loss on dispositions	<u>\$ (250,962 )</u>

The current asset section of the Consolidated Balance Sheets includes, at June 30, 2000 and as reclassified at September 30, 1999, net assets of discontinued operations which would normally appear in the following balance sheet categories:

<i>In thousands</i>	<b>June 30, 2000</b>	<b>September 30, 1999</b>
Accounts and notes receivable (net)	\$ 165,235	\$ 191,513
Inventories	125,433	132,178
Property (net)	50,998	47,154
Goodwill (net)	43,972	431,654
Prepaid expenses and other assets	<u>25,799</u>	<u>17,916</u>
Total assets	<u>411,437</u>	<u>820,415</u>
Accounts payable	87,905	107,282
Accrued liabilities	<u>25,749</u>	<u>28,686</u>
Total liabilities	<u>113,654</u>	<u>135,968</u>
Net assets	<u>\$ 297,783</u>	<u>\$ 684,447</u>

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

#### **3. Comprehensive Income**

The Company has adopted Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income", which establishes standards for the reporting and display of comprehensive income and its components in financial statements. This statement defines comprehensive income as all changes in equity during a period from non-owner sources. The Company has no reported material differences between net earnings and comprehensive income. Therefore, statements of comprehensive income have not been presented.

#### **4. Impairment of Goodwill and Other Long-Lived Assets**

The Company assesses the recoverability of goodwill using a fair value approach, based on discounted future operating cash flows. At least annually, typically in connection with the Company's planning cycle, management reviews goodwill for possible impairment based on several criteria, including, but not limited to, sales and operating earnings trends, discounted operating cash flows and other operating factors.

The Company assesses the impairment of long-lived assets used in operations when indicators of impairment are present and the undiscounted future cash flows are not sufficient to recover the assets' carrying amounts. An impairment loss is measured by comparing the fair value of an asset to its carrying amount.

#### **5. Revenue Recognition**

The Company records revenues when product is shipped or services are provided to its customers. Along with other companies in its industry, the Company reports as revenues the gross dollar amount of bulk shipments to customers' warehouses and the related costs in cost of sales. Bulk shipment transactions are arranged by the Company with its suppliers at the express direction of the customer, and involve either shipments from the supplier directly to customers' warehouse sites or shipments from the supplier to Company warehouses for immediate shipment to customers' warehouse sites. Gross profit earned by the Company on bulk shipments was not material in any period presented.

#### **6. Accounts Receivable Securitization**

On December 17, 1999, the Company entered into an accounts receivable securitization program with a bank which provides additional borrowing capacity for the Company (the "Receivables Securitization Program"). On February 29, 2000, the Receivables Securitization Program was amended to, among other things, increase the funding limit to \$350 million, and to provide for additional purchaser financial institutions.

Through the Receivables Securitization Program, the Company's Bergen Brunswig Drug Company subsidiary sells, on an ongoing basis, certain of its accounts receivable to Blue Hill, Inc. ("Blue Hill"), a 100%-owned special purpose subsidiary. Blue Hill, in turn, sells an undivided percentage

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

ownership interest in such receivables to financial institutions. The program qualifies for treatment as a sale of assets under SFAS No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities". Sales are recorded at the estimated fair value of the receivables sold, reflecting discounts for the time value of money based on specified interest rates; the weighted average rate for the program was approximately 6.56% at June 30, 2000.

As of June 30, 2000, the Company had outstanding net proceeds of \$329.0 million from the sale of such receivables under the Receivables Securitization Program, and this amount is reflected as a reduction of accounts receivable in the accompanying consolidated balance sheets. As sold receivables are collected, additional receivables may be sold under the program. Aggregate discount and fees of approximately \$6.4 million and \$11.4 million on the sold receivables are included in net interest expense in the accompanying statements of consolidated earnings for the three and nine-month periods ended June 30, 2000, respectively.

The Company maintains an allowance for doubtful receivables based upon the expected bad debt losses of all consolidated accounts receivable, including receivables sold by Blue Hill.

#### **7. Long-Term Debt**

Long-term debt at June 30, 2000 and September 30, 1999 consisted of the following:

<i>Dollars in thousands</i>	<b>June 30, 2000</b>	<b>September 30, 1999</b>
7 3/8% senior notes due 2003	\$ 149,716	\$ 149,633
7 1/4% senior notes due 2005	99,828	99,802
8 3/8% senior subordinated notes due 2008	308,119	308,119
Revolving credit facilities averaging 7.21% and 6.00%, respectively	55,000	249,717
Interim term loan due 2001, at 9.15%	200,000	-
Term loan due 2005, at 8.84%	300,000	-
Term loan due 2006, 10.03%	199,500	-
Commercial paper averaging 5.72%	-	692,891
7% convertible subordinated debentures due 2006	20,609	20,609
6 7/8% exchangeable subordinated debentures due 2011	8,425	8,425
10% unsecured promissory note	-	4,500
Other	2,720	3,908
Total	1,343,917	1,537,604
Less current portion (see below)	273,925	544,260
Total	<u>\$ 1,069,992</u>	<u>\$ 993,344</u>

On April 20, 2000, the Company replaced both its unsecured credit facility (the "Credit Facility") and its unsecured credit agreement (the "Credit Agreement") with a new \$1.5 billion senior secured credit agreement (the "Senior Credit Agreement") to be used to refinance existing indebtedness

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

as well as fund general corporate purposes and working capital needs. The Senior Credit Agreement consists of an \$800 million revolving facility maturing in April 2003, a \$200 million interim term loan maturing in October 2001, a \$300 million term loan maturing in March 2005 and a \$200 million term loan maturing in March 2006. As required under the Senior Credit Agreement, the Company repaid \$0.5 million of the March 2006 term loan as of June 30, 2000. Borrowings under the Senior Credit Agreement are secured by substantially all of the Company's assets. The availability of revolving loans under the Senior Credit Agreement is reduced by the amount of any outstanding letters of credit and is tied to a borrowing base formula and certain covenants; the maximum amount of revolving loans outstanding may not exceed specified percentages of the Company's eligible accounts receivable and eligible inventory. There were no outstanding revolving loans at June 30, 2000. Interest accrues at specified rates based on the Company's debt ratings; initially, such rates range from 2.5% to 3.5% over LIBOR or 1.5% over prime, with a weighted average rate of approximately 9.3% at June 30, 2000. The Senior Credit Agreement has loan covenants which require the Company to maintain certain financial statement ratios and places certain limitations on, among other things, dividend payments and capital expenditures.

One of the Company's subsidiaries has a \$55 million bank revolving credit facility which expires on May 20, 2001. Borrowings under the facility bear interest at 0.5% above LIBOR and are secured by a standby letter of credit under the Senior Credit Agreement.

The Company's Credit Facility, which expired in April 2000, allowed borrowings of up to \$600 million under a revolving line of credit and also allowed borrowings under discretionary credit lines ("discretionary lines"), as available, outside of the Credit Facility.

The Company's Credit Agreement, which was effective through March 2001, allowed borrowings of up to \$400 million and also allowed borrowings under discretionary lines, as available, outside of the Credit Agreement.

The Company's unsecured commercial paper dealer agreements (the "Commercial Paper Agreements") provided for the private placement of short-term commercial paper notes of the Company (the "Notes"), as available, up to a maximum of \$1 billion outstanding. The Commercial Paper Agreements expired on April 11, 2000. During the second quarter of fiscal 2000 and through April 11, 2000, the Company was not able to access the commercial paper market due to downgrades in the Company's credit rating which occurred in November and December 1999 and February 2000.

Aggregate borrowings under the Senior Credit Agreement, Credit Facility, Credit Agreement, other revolving credit facilities, discretionary lines and the Commercial Paper Agreements amounted to approximately \$754 million and \$943 million at June 30, 2000 and September 30, 1999, respectively. An aggregate of \$271 million of such outstanding borrowings at June 30, 2000 has been classified in the current portion of long-term debt based on the required application of a portion of the net proceeds from the proposed sale of BBMC and Stadlander (see Note 2) and scheduled future repayments within the next year as required under the Senior Credit Agreement.

During November 1999, a \$4.5 million 10% unsecured promissory note, which the Company assumed in connection with the acquisition of PharMerica, was repaid when PharMerica agreed to offset the \$4.5 million against the outstanding accounts receivable balance of the noteholder, who is a PharMerica customer.

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

The Company also filed a shelf registration statement with the SEC which became effective on March 27, 1996 (the "1996 Registration Statement"). The 1996 Registration Statement allows the Company to sell senior and subordinated debt or equity securities to the public from time to time up to an aggregate maximum principal amount of \$400 million. The Company intends to use the net proceeds from any sale of such securities for general corporate purposes, which may include, without limitation, the repayment of indebtedness of the Company or of any of its subsidiaries, and entities which the Company may acquire in the future. Any offering of such securities shall be made only by means of a prospectus.

#### **8. Preferred Securities of Trust**

In May 1999, Bergen Capital I (the "Trust"), a wholly-owned subsidiary trust of the Company, issued 12,000,000 shares of 7.80% Trust Originated Preferred Securities (SM) (TOPrS(SM)) (the "Preferred Securities") at \$25 per security. The proceeds of such issuances were invested by the Trust in \$300 million aggregate principal amount of the Company's 7.80% Subordinated Deferrable Interest Notes due June 30, 2039 (the "Subordinated Notes"). The Subordinated Notes represent the sole assets of the Trust and bear interest at the annual rate of 7.80% per annum, payable quarterly, and are redeemable by the Company beginning in May 2004 at 100% of the principal amount thereof. The obligations of the Trust related to the Preferred Securities are fully and unconditionally guaranteed by the Company.

Holders of the Preferred Securities are entitled to cumulative cash distributions at an annual rate of 7.80% of the liquidation amount of \$25 per security. The Preferred Securities will be redeemable upon any repayment of the Subordinated Notes at 100% of the liquidation amount beginning in May 2004.

The Subordinated Notes and the related Trust investment in the Subordinated Notes have been eliminated in consolidation and the Preferred Securities are reflected as outstanding in the accompanying consolidated financial statements.

#### **9. Earnings (Loss) Per Share**

Basic earnings (loss) per share ("Basic") is computed by dividing net earnings (loss) (the numerator) by the weighted average number of shares of Class A Common Stock outstanding during each period (the denominator). Diluted earnings (loss) per share is similar to the computation for Basic, except that the denominator is increased by the dilutive effect of employees' stock options outstanding, computed using the treasury stock method.

#### **10. Dividends**

On May 9, 2000, the Company declared a quarterly cash dividend of \$0.01 per share on the Company's Common Stock that was paid on June 5, 2000 to shareowners of record on May 15,

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

2000. Quarterly cash dividends of \$0.075 per share of Common Stock were paid on December 1, 1999 and March 6, 2000 and recorded in the first and second quarters of fiscal 2000, respectively.

On August 10, 2000, the Company declared a quarterly cash dividend of \$0.01 per share on the Company's Common Stock, payable September 5, 2000 to shareowners of record on August 21, 2000. This cash dividend will be recorded in the fourth quarter of fiscal 2000.

On September 24, 1998, the Company declared a \$0.075 per share quarterly cash dividend on the Company's Common Stock that was paid on December 1, 1998 to shareowners of record as of November 2, 1998. This \$0.075 payment constituted the Company's dividend for the first quarter ended December 31, 1998. For accounting purposes, this cash dividend was recorded in the fourth fiscal quarter ended September 30, 1998, resulting in a larger than usual dividend in that quarter and no dividend during the quarter ended December 31, 1998. Quarterly cash dividends of \$0.075 per share of Common Stock were paid on March 1, June 1, and September 1, 1999 and recorded in the second, third and fourth quarters, respectively, of fiscal 1999.

#### **11. Business Acquisitions**

On April 26, 1999, the Company acquired PharMerica, one of the nation's largest providers of pharmaceutical products and pharmacy management services to long-term care and alternate site settings, headquartered in Tampa, Florida. The Company issued approximately 24.7 million shares of Common Stock valued at approximately \$665 million, acquired net assets (excluding debt) at fair value of approximately \$315 million, assumed debt of approximately \$600 million and incurred costs of approximately \$10 million. The Company recorded goodwill of approximately \$960 million in the transaction.

If the acquisition of PharMerica had occurred as of the beginning of the nine months ended June 30, 1999, unaudited pro forma net sales and other revenues, earnings from continuing operations, and diluted earnings per share from continuing operations would have been as follows:

	<b>Nine Months Ended June 30, 1999</b>
<i>Dollars in millions, except per share amounts</i>	
Net sales and other revenues	<u>\$ 14,992.3</u>
Earnings from continuing operations	<u>\$ 105.4</u>
Diluted earnings per share from continuing operations	<u>\$ 0.78</u>

The pro forma operating results above include the results of operations for PharMerica for the nine months ended June 30, 1999 with increased goodwill amortization along with other relevant adjustments to reflect fair value of the acquired assets. Additionally, the pro forma operating results include the effect of decreased interest expense attributable to PharMerica becoming a co-borrower under the Company's credit facilities; pro forma adjustments to the provision for taxes on income to reflect, primarily, higher non-deductible goodwill amortization; and pro forma issuance of the Company's

## **BERGEN BRUNSWIG CORPORATION**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)**

Common Stock reflected in the weighted average number of shares outstanding for the computations of pro forma diluted earnings per share.

The results of operations reflected in the pro forma information above are not necessarily indicative of the results which would have been reported if the PharMerica acquisition had been effected at the beginning of the nine-month period.

On January 21, 1999, the Company acquired Stadtlander, a national leader in disease-specific pharmaceutical care delivery for transplant, HIV, infertility and serious mental illness patient populations and a leading provider of pharmaceutical care to the privatized corrections market, headquartered in Pittsburgh, Pennsylvania. The Company paid approximately \$195 million in cash and issued approximately 5.7 million shares of Common Stock, previously held as Treasury shares, valued at approximately \$140 million. The Company acquired net assets (excluding debt) at fair value of approximately \$40 million, assumed debt of approximately \$100 million and incurred costs of approximately \$10 million. The Company recorded goodwill of approximately \$405 million in the transaction. On July 5, 2000, the Company announced that it had entered into a definitive agreement to sell the specialty pharmacy assets of Stadtlander (see Note 2).

On February 10, 1999, the Company acquired J.M. Blanco, Inc. ("J.M. Blanco"), Puerto Rico's largest pharmaceutical distributor, headquartered in Guaynabo, Puerto Rico, for a cash purchase price of approximately \$30 million. The Company acquired net assets (excluding debt) at fair value of approximately \$24 million, assumed debt of approximately \$22 million and incurred costs of approximately \$1 million. The Company recorded goodwill of approximately \$29 million in the transaction.

On December 31, 1998, the Company acquired Medical Initiatives, Inc. ("MII"), a pre-filler of pharmaceuticals for oncology centers, located in Tampa, Florida. The Company issued approximately 200,000 shares of Common Stock, previously held as Treasury shares, valued at approximately \$6.0 million, acquired net assets at fair value of approximately \$0.1 million and incurred costs of \$0.2 million. The Company recorded goodwill of approximately \$6.1 million in the transaction.

Had the acquisitions of J.M. Blanco and MII occurred at the beginning of fiscal 1999, the pro forma inclusion of their operating results would not have had a significant effect on the reported consolidated net sales and other revenues and net earnings for the three and nine months ended June 30, 1999.

Each of the aforementioned acquisitions was accounted for as a purchase for financial reporting purposes. The Company is in disagreement with the seller and the seller's independent auditors regarding the valuation of the net assets of Stadtlander. Notwithstanding the pending sale of the specialty assets of Stadtlander (see Note 2), the Company will not assign to the purchaser of the assets its claims against the seller. Any amounts realized from the seller would be recorded as an adjustment to the purchase price. See Part II, Item 1 entitled "Legal Proceedings."

## **12. Business Segment Information**

## **BERGEN BRUNSWIG CORPORATION**

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)

The Company is organized based upon the products and services it provides to its customers. The Company's continuing operations segments have been aggregated into three reportable segments: Pharmaceutical Distribution, PharMerica, and Other Businesses.

The Pharmaceutical Distribution segment includes Bergen Brunswig Drug Company ("BBDC") and ASD Specialty Healthcare Inc. ("ASD"). This segment sells pharmaceuticals, over-the-counter medicines, health and beauty aids, and other health-related products to hospitals, managed care facilities, retail pharmacies, and food/drug combination stores. In addition, specialty pharmaceutical products are sold to physicians, clinics and other providers in the nephrology, oncology, plasma and vaccines sectors. This segment also provides promotional, inventory management and information services to its customers.

The PharMerica segment provides institutional pharmacy services to the elderly, chronically ill and disabled in long-term care and alternate site settings, including skilled nursing facilities, assisted living facilities, specialty hospitals, residential living communities and the home. PharMerica also provides mail order pharmacy services to workers' compensation patients and the catastrophically ill.

The Other Businesses segment includes four small entities: ICS, which provides commercial outsourcing to healthcare product manufacturers; The Lash Group, Inc., which provides reimbursement consulting services for pharmaceutical, biotechnology and medical device businesses; Choice Medical, Inc., which provides software to healthcare providers; and Medi-Mail, a small mail service entity.

All of the Company's operations are located in the United States and the Commonwealth of Puerto Rico.

# **BERGEN BRUNSWIG CORPORATION**

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued) (UNAUDITED)

The following tables present segment information for the three and nine months ended June 30, 2000 and 1999 (in thousands):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
<b>Net Sales and Other Revenues</b>				
Pharmaceutical Distribution	\$ 4,651,583	\$ 4,053,444	\$ 13,431,408	\$ 11,816,893
PharMerica	320,929	188,157	950,429	188,157
Other Businesses	6,985	5,939	20,007	17,914
Corporate	-	295	573	576
Intersegment Eliminations	(174,054)	(99,587)	(514,149)	(103,257)
Revenue excluding bulk shipments	4,805,443	4,148,248	13,888,268	11,920,283
Bulk shipments of pharmaceuticals to customers' warehouses	993,010	1,061,103	3,109,046	2,839,032
Total net sales and other revenues	\$ 5,798,453	\$ 5,209,351	\$ 16,997,314	\$ 14,759,315

Management evaluates segment performance based on revenues excluding bulk shipments to customers' warehouses. For further information regarding the nature of bulk shipments, see Note 5.

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
<b>Operating Earnings from Continuing Operations, LIFO Basis</b>				
Pharmaceutical Distribution	\$ 92,136	\$ 89,398	\$ 255,918	\$ 250,911
PharMerica	(1,683)	7,652	14,550	7,652
Other Businesses	(1,493)	(1,370)	(4,574)	(3,791)
Corporate	(15,257)	(12,487)	(48,445)	(43,603)
Total operating earnings from continuing operations, LIFO basis	73,703	83,193	217,449	211,169
Net interest expense	(31,974)	(17,865)	(80,627)	(37,449)
Earnings from continuing operations before taxes on income and distributions on preferred securities of subsidiary trust	\$ 41,729	\$ 65,328	\$ 136,822	\$ 173,720

**BERGEN BRUNSWIG CORPORATION**

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)  
(UNAUDITED)

Segment operating profit is evaluated on both a FIFO and LIFO basis. However, the consolidated LIFO charge was \$1.2 million in the three-month period ended June 30, 2000, and \$3.7 million and \$2.5 million in the nine-month periods, respectively. There was no LIFO charge in the three-month period ended June 30, 1999. Since the effect on the operation earnings of any segment or the consolidated total was immaterial, only the LIFO basis is presented herein. Certain corporate office expenses of a direct operational nature are charged to the segments, but general corporate overhead is not allocated. Also, interest expense is not allocated in the continuing operations segments.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

PORTIONS OF MANAGEMENT'S DISCUSSION AND ANALYSIS PRESENTED BELOW, CONSISTING OF THOSE STATEMENTS WHICH ARE NOT HISTORICAL IN NATURE (INCLUDING, WITHOUT LIMITATION, THE COMPANY'S EXPECTATIONS REGARDING MARGINS, SALES MIX, COST REDUCTION EFFORTS, NURSING HOME ADMISSIONS, CASH AND CAPITAL REQUIREMENTS, MAY CONSTITUTE "FORWARD-LOOKING STATEMENTS" WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH COULD CAUSE ACTUAL RESULTS TO MATERIALLY DIFFER FROM THOSE PROJECTED OR IMPLIED. THE MOST SIGNIFICANT OF SUCH RISKS, UNCERTAINTIES AND OTHER FACTORS ARE DESCRIBED IN EXHIBIT 99(A) TO THE COMPANY'S ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1999. IN MANY CASES, THE COMPANY CANNOT PREDICT WHAT FACTORS WOULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE INDICATED BY THE FORWARD-LOOKING STATEMENTS. THE COMPANY DISCLAIMS ANY OBLIGATION TO UPDATE ANY FORWARD-LOOKING STATEMENT.

**RESULTS OF OPERATIONS**

**CONTINUING OPERATIONS**

The Company reported a significant increase in revenues during the three and nine months ended June 30, 2000 compared to the same periods in the prior fiscal year due to internal growth and acquisitions. However, earnings and diluted earnings per share trends were negatively affected by higher bad debt expense at PharMerica, lower gross margins in Pharmaceutical Distribution and interest expense incurred during the current fiscal year related to certain business acquisitions consummated in fiscal 1999. Lower diluted earnings per share also reflects the effect of the Company's issuance of additional shares of Common Stock in connection with certain of those fiscal 1999 acquisitions.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

The following table summarizes the Company's revenues, interest expense and earnings during these periods:

<i>Dollars in millions</i>	<b>Three Months Ended June 30,</b>		<b>%</b>	<b>Nine Months Ended June 30,</b>		<b>%</b>
	<b>2000</b>	<b>1999</b>		<b>2000</b>	<b>1999</b>	
Net sales and other revenues	<u>\$ 5,798.5</u>	<u>\$ 5,209.4</u>	11 %	<u>\$ 16,997.3</u>	<u>\$ 14,759.3</u>	15 %
Operating earnings from continuing operations	<u>\$ 73.7</u>	<u>\$ 83.2</u>	(11) %	<u>\$ 217.4</u>	<u>\$ 211.2</u>	3 %
Net interest expense*	<u>\$ 32.0</u>	<u>\$ 17.9</u>	79 %	<u>\$ 80.6</u>	<u>\$ 37.4</u>	115 %
Earnings from continuing operations	<u>\$ 19.7</u>	<u>\$ 36.0</u>	(45) %	<u>\$ 64.3</u>	<u>\$ 100.6</u>	(36) %
Diluted earnings per share from continuing operations	<u>\$ .15</u>	<u>\$ .28</u>	(46) %	<u>\$ .48</u>	<u>\$ 0.88</u>	(45) %

\* Excluding distributions on preferred securities of subsidiary trust.

Fluctuations in the Company's operating results are partially due to the results of entities which were acquired during the past two years. Such acquisitions, which are described in more detail under the caption "Business Acquisitions" herein, are summarized as follows:

<b>Acquisition Date</b>	<b>Acquired Entity</b>	<b>Segment</b>
April 1999	PharMerica, Inc.	PharMerica
February 1999	J.M. Blanco, Inc.	Pharmaceutical Distribution
January 1999	Stadtlander Operating Company, LLC	Stadtlander (discontinued)
December 1998	Medical Initiatives, Inc.	Pharmaceutical Distribution

Each of the transactions listed above is reflected in the Company's consolidated financial statements only from the respective acquisition date.

Of the acquired entities, PharMerica and Stadtlander have had the most significant impact on the Company's results of operations. Although Stadtlander is now classified as a discontinued operation, that acquisition nevertheless had a negative impact on earnings from continuing operations due the effect of interest expense. The Company allocated interest to discontinued operations by applying its average bank borrowing rate to the expected proceeds from the dispositions, which are assumed to approximate the debt to be retired. However, since the aggregate debt incurred and assumed in connection with the Stadtlander acquisition exceeded the expected proceeds, a portion of related interest remained in continuing operations.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**Operating Earnings from Continuing Operations**

The Company reported a decrease in operating earnings of 11% during the three months ended June 30, 2000 and an increase in operating earnings of 3% during the nine months then ended. The following table provides a summarized statement of continuing operations, including key line item growth rates and ratios. PharMerica, due to the nature of its pharmaceutical service business, has significantly higher gross margins and operating expense ratios than the Company's principal pharmaceutical distribution businesses. Accordingly, certain ratios in the table have also been shown excluding PharMerica in order to present a more meaningful comparison with historical results.

<i>Dollars in millions</i>	<b>Three Months Ended June 30,</b>			<b>Nine Months Ended June 30,</b>		
	<b>2000</b>	<b>1999</b>	<b>% Change</b>	<b>2000</b>	<b>1999</b>	<b>% Change</b>
Revenues excluding bulk Shipments	\$ 4,805.4	\$ 4,148.2	16 %	\$ 13,888.2	\$ 11,920.3	17 %
Bulk shipments	993.0	1,061.1	(6)	3,109.0	2,839.0	10
Total net sales and other Revenues	<u>\$ 5,798.4</u>	<u>\$ 5,209.3</u>	<u>11 %</u>	<u>\$ 16,997.3</u>	<u>\$ 14,759.3</u>	<u>15 %</u>
Gross profit	\$ 319.3	\$ 269.3	19 %	\$ 934.5	\$ 632.6	48 %
Operating expenses	<u>245.6</u>	<u>186.1</u>	<u>32</u>	<u>717.1</u>	<u>421.4</u>	<u>70</u>
Operating earnings from continuing operations	<u>\$ 73.7</u>	<u>\$ 83.2</u>	<u>(11) %</u>	<u>\$ 217.4</u>	<u>\$ 211.2</u>	<u>3 %</u>

Percentage of revenues excluding bulk shipments:

Gross profit	6.64%	6.49%	6.73%	5.31%
Operating expenses	5.11%	4.48%	5.16%	3.54%
Operating earnings	1.53%	2.01%	1.57%	1.77%

Percentage of revenues excluding bulk shipments, excluding PharMerica:

Gross profit	4.35%	4.83%	4.33%	4.73%
Operating expenses	2.73%	2.97%	2.82%	3.01%
Operating earnings	1.62%	1.86%	1.51%	1.72%

Revenues excluding bulk shipments increased 16% and 17% during the three and nine months of fiscal 2000. Of this increase, 15% and 13%, respectively, represented internal growth while 1% and 4%, respectively, represented the effect of acquired entities.

Along with other companies in its industry, the Company reports bulk shipments of pharmaceuticals in revenues and cost of sales. Bulk shipment transactions are arranged by the Company with its suppliers at the express direction of the customer, and involve either shipments from the supplier directly to customers' warehouse sites or shipments from the supplier to Company warehouses for immediate shipment to customers' warehouse sites. Bulk sales of pharmaceuticals do not impact the Company's inventory since the Company simply processes the orders that it receives

## **ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

from its suppliers directly to the customers' warehouses. The Company serves as an intermediary by paying the supplier and billing the customer for the goods. Due to the insignificant margins generated through bulk shipments, fluctuations in such revenues have an immaterial impact on the Company's operating earnings.

Gross profit as a percentage of revenues excluding bulk shipments ("gross margin") was 4.35% and 4.83% for the three months ended June 30, 2000 and 1999, respectively, and 4.33% and 4.73% for the respective nine-month periods, excluding the effect of PharMerica. Substantially all of the 48 basis point decline in the three months and the 40 basis point decline during the nine months reflects lower margins in the Pharmaceutical Distribution segment. Such margins declined mainly due to intense price competition within BBDC's industry, as well as to a change in BBDC's sales mix, with a greater proportion of revenues coming from high-volume, low-margin customers. In addition, BBDC's gross margins were impacted as the Company did not fully participate in seasonal investment buying activity during the winter months of fiscal 2000 due to limited availability of funds preceding the refinancing of the Company's revolving credit facility (see Note 7). ASD's gross margins decreased in both the three and nine months in comparison with strong fiscal 1999 periods, during which ASD benefited from favorable conditions in the plasma and flu vaccine markets.

In all of the Company's wholesale distribution businesses, it is customary to pass on manufacturers' price increases to customers. Investment buying enables distributors such as the Company to benefit by purchasing goods in advance of anticipated manufacturers' price increases. Consequently, the rate or frequency of future price increases by manufacturers, or the lack thereof, and the Company's ability to take advantage of investment buying opportunities, influences the profitability of the Company.

Management anticipates further downward pressure on gross margins in the distribution businesses during the fourth quarter of fiscal 2000 because of continued price competition and the impact of higher sales growth rates with some of its highest-volume, lowest-margin customers. Management expects that these pressures may be offset to some extent by an increased sales mix of more profitable products and services and continued reduction of operating expenses as a percentage of revenues. However, no assurance can be given that such improved sales mix or expense reduction can be achieved since many of the factors that impact such results (e.g. the effect of group purchasing agreements, competitive inroads, market conditions, etc.) are outside the Company's control. Similarly, no assurance can be given that the Company will be able to offset such downward pressure through investment buying.

Operating expenses include distribution, selling, general and administrative expenses ("DSG&A"). Excluding PharMerica, operating expenses as a percentage of revenues excluding bulk shipments were 2.73% and 2.97% for the three months ended June 30, 2000 and 1999, respectively, and 2.82% and 3.01% for the nine-month periods, respectively. These reductions were primarily attributable to continued operating efficiencies and the spreading of costs over a larger revenue base. The Company's distribution infrastructure has been able to process increasing volume without a proportionate increase in operating expenses. Also, the aforementioned shift in the distribution businesses' mix towards high-volume customers reduced the operating expense ratio because these customers are generally less costly to service.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**Segment Information**

Following is a summary of revenues and operating earnings for the Company's segments:

*Dollars in millions*

<b>Revenues Excluding Bulk Shipments</b>	<b>Three Months Ended June 30,</b>		<b>Growth Rate</b>	<b>Nine Months Ended June 30,</b>		<b>Growth Rate</b>
	<b>2000</b>	<b>1999</b>		<b>2000</b>	<b>1999</b>	
Pharmaceutical Distribution	\$ 4,651.6	\$ 4,053.4	15%	\$ 13,431.4	\$ 11,816.9	14%
PharMerica	320.9	188.2	-	950.4	188.2	-
Other Businesses	7.0	5.9	18	20.0	17.9	12
Corporate	-	.3	-	.6	.6	-
Intersegment Eliminations	(174.1)	(99.6)	-	(514.1)	(103.3)	-
Total	\$ 4,805.4	\$ 4,148.2	16%	\$ 13,888.3	\$ 11,920.3	17%

  

<b>Operating Earnings (Loss), LIFO Basis</b>	<b>Three Months Ended June 30,</b>		<b>Growth Rate</b>	<b>Nine Months Ended June 30,</b>		<b>Growth Rate</b>
	<b>2000</b>	<b>1999</b>		<b>2000</b>	<b>1999</b>	
Pharmaceutical Distribution	\$ 92.1	\$ 89.4	3%	\$ 255.9	\$ 250.9	2%
PharMerica	(1.7)	7.7	-	14.6	7.7	-
Other Businesses	(1.5)	(1.4)	(9)	(4.6)	(3.8)	(21)
Corporate	(15.2)	(12.5)	(22)	(48.5)	(43.6)	(11)
Total	\$ 73.7	\$ 83.2	(11)%	\$ 217.4	\$ 211.2	3%

Operating earnings (loss) as a percentage of revenues excluding bulk shipments:

Pharmaceutical Distribution	1.98 %	2.21 %	1.91 %	2.12 %
PharMerica	(0.52) %	4.07 %	1.53 %	4.07 %
Other Businesses	(21.37) %	(23.07) %	(22.86) %	(21.16) %
Total	1.53 %	2.01 %	1.57 %	1.77 %

***Pharmaceutical Distribution.***

Revenues increased 15% and 14% in the three and nine months ended June 30, 2000, respectively, substantially all of which represented internal growth. BBDC's revenues increased 15% and 13% for the three and nine-month periods, respectively, reflecting increased volume across all geographic regions and in both the retail and health systems customer categories. ASD's revenues increased 14% and 19% for the three and nine-month periods, respectively, principally representing continued strong growth in its oncology business. These increases were comprised of higher shipments to existing BBDC and ASD customers as well as shipments to new customers. National industry economic conditions were also favorable, with increases in prescription drug usage and higher pharmaceutical prices contributing to this segment's revenue growth.

Operating earnings increased 3% and 2% for the three and nine months ended June 30, 2000, respectively. As a percentage of revenues, operating earnings were 1.98% and 2.21% for the

## **ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

third quarter of fiscal 2000 and 1999, respectively, and 1.91% and 2.12% for the respective nine-month periods. The 23 and 21 basis point reductions, respectively, in the operating earnings ratios are due to lower gross margins, partially offset by BBDC's operating expense efficiencies (see "Operating Earnings" section above).

### *PharMerica.*

PharMerica's revenues increased 13% and 10%, respectively, in comparison with the quarter and nine months ended June 30, 1999 (including the months prior to the Company's acquisition of PharMerica). These increases are primarily attributable to the growth in the number of long-term care beds served, increased use of new medications and treatment modalities, and growth in mail order shipments.

However, PharMerica reported an operating loss of \$1.7 million in the third quarter of fiscal year 2000, principally due to a higher bad debt provision, as its customers have continued to feel the adverse effects of PPS (see below). As part of its plan to address the bad debt situation, PharMerica's management has implemented new credit policies and guidelines, which have improved the quality of receivables on new revenues. These initiatives have resulted in an improvement in cash collected, a reduction in accounts receivable balances over 120 days old, and a four-day reduction in Days Sales Outstanding.

PharMerica's operations have been adversely affected by negative industry trends resulting from dramatically lower reimbursement to nursing homes for Medicare patients under the Prospective Payment System ("PPS"). A negative consequence of these trends has been bankruptcy reorganization filings by several long-term care providers, including the filing by a significant customer of PharMerica (see below). The adverse effects of PPS included (1) lower occupancy by Medicare-funded patients at nursing facilities serviced by PharMerica, (2) significantly diminished acuity levels among residents of these facilities, which reduced the overall utilization of drugs, and (3) increased customer pricing pressure, thereby reducing PharMerica's gross margins. While the Company did see further stabilization of these trends in the first nine months of fiscal 2000, management expects that they will continue to affect PharMerica in the fourth quarter of fiscal 2000. PharMerica sees some indications that Medicare admissions to its customers' facilities may be increasing. Certain customers are also identifying new opportunities to expand their ability to service different acuity levels and the number of patient categories admitted to their facilities. Additional reimbursement that may be available as a result of recent legislative action may improve the number of high acuity admissions. Approximately 34 states recently announced reductions in Medi-Caid reimbursement for certain I.V. drugs provided to Medi-Caid beneficiaries. In addition, the Health Care Financing Administration is currently evaluating federal upper limit pricing for multi-source drugs. The Company continues to evaluate the likely impact of the announced and proposed changes as more information becomes available.

As disclosed in the Company's Form 10-Q for the quarter ended December 31, 1999, a significant customer of PharMerica filed for Chapter 11 bankruptcy protection on February 2, 2000. The customer has not yet filed their plan of reorganization with the bankruptcy court. The Company has reviewed the relevant facts and circumstances available at this early stage and has provided an estimated reserve in the allowance for doubtful accounts for the portion of the receivable which management believes will ultimately be uncollectible from this customer. As the bankruptcy proceedings progress, management will continually monitor the adequacy of the reserve and make any adjustments, if necessary.

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)

Management is continuing to implement its plan designed to improve PharMerica's earnings, including (1) strengthening of billing and collections management, (2) enabling PharMerica to participate in the Company's generic purchasing programs in order to reduce drug costs, (3) outsourcing of delivery services, (4) conversion of PharMerica's long-term care pharmacies to a common proprietary AS400 computer system and (5) consolidation of pharmacies to streamline operations.

### *Other Businesses.*

Revenues increased 18% and 12% in the three and nine months ended June 30, 2000, respectively, principally related to higher outsourcing and consulting fees earned by ICS and The Lash Group, Inc. Operating earnings decreased 9% and 21% in the three and nine-month periods of fiscal 2000, primarily reflecting higher expenses incurred by Choice Medical, Inc. in connection with the launch of a new software product.

### *Corporate.*

Corporate expenses increased \$2.7 million, or 22%, in the third quarter of fiscal 2000, and increased \$4.9 million, or 11%, in the nine-month period. These increases primarily reflect the incremental costs of operating the Company's expanded businesses. In addition, corporate expenses in the third quarter of fiscal 1999 were reduced by the recovery under an indemnity agreement of previously-incurred legal fees.

### **Interest Expense and Distributions on Preferred Securities**

The Company's financing expenses are comprised of two line items on the statements of consolidated earnings:

<i>Dollars in millions</i>	Three Months Ended June 30,		Nine Months Ended June 30,	
	2000	1999	2000	1999
Net interest expense (pre-tax)	\$ 32.0	\$ 17.9	\$ 80.6	\$ 37.4
Distributions on preferred securities of subsidiary Trust (before tax benefit of \$2.3, \$0.9, \$7.0 and \$0.9, respectively)	5.8	2.2	17.6	2.2
Total financing expenses	\$ 37.8	\$ 20.1	\$ 98.2	\$ 39.6

## **ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

Total financing expenses increased \$17.7 million and \$58.6 million, respectively, or 88% and 148%, respectively, over the three and nine-month periods of the prior year. These increases were primarily due to higher borrowings under the Company's Senior Credit Agreement, Credit Facility, Credit Agreement, Commercial Paper Agreements, debt assumed in connection with the fiscal 1999 acquisitions, and the issuance of the Preferred Securities. In addition, the Company has incurred higher interest rates on its borrowings due to both (a) increases in the prime lending rate; and (b) downgrading of the Company's credit ratings.

In both the three and nine-month periods of fiscal 2000, a significant portion of the higher borrowings was related to the assumption of the debt of entities acquired in fiscal 1999 and the financing of a portion of the purchase price of certain of those entities.

### **Taxes on Income**

Taxes on income, excluding the tax benefit on distributions of the Company's Preferred Securities, were 44.3% and 42.9% of pre-tax earnings in the three-month periods ended June 30, 2000 and 1999, respectively, and 45.3% and 41.3% of pre-tax earnings in the respective nine-month periods. The 1.4% and 4.0% increases in the effective rates in the third quarter and nine months of fiscal 2000, respectively, primarily reflect the nondeductible goodwill amortization associated with the PharMerica and Blanco acquisitions. The Company's total goodwill amortization from continuing operations in the first nine months of fiscal 2000 was \$23.8 million (of which approximately \$16.1 million was non-deductible) and its goodwill amortization from continuing operations in the first nine months of fiscal 1999 was \$9.8 million (of which approximately \$7.5 million was non-deductible).

### **Earnings per Share**

Earnings per share fluctuations result primarily from changes in the Company's net earnings from continuing operations. However, during the third quarter and first nine months of fiscal 2000, diluted earnings per share from continuing operations were also impacted by increases of 6% and 18%, respectively, in the weighted average number of common shares outstanding, from 127.0 million shares to 134.5 million shares in the third quarter of fiscal 2000, and from 113.9 million shares to 134.5 million shares in the current nine-month period. The increases were primarily related to the issuance of 24.7 million shares in connection with the acquisition of PharMerica in April 1999 and the issuance of 5.7 million shares in connection with the acquisition of Stadtlander in January 1999. There were 134.7 million shares of the Company's common stock outstanding at June 30, 2000.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**DISCONTINUED OPERATIONS**

On June 26, 2000, the Company announced that it had entered into a definitive agreement to sell the stock of BBMC to Allegiance Corporation, a subsidiary of Cardinal Health, Inc., for approximately \$181 million in cash before retention of certain liabilities and subject to post-closing accounting adjustments. The required waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, expired on July 28, 2000. If all other regulatory approvals and various closing conditions are satisfied in a timely manner, the transaction is expected to close in August 2000. The net proceeds from this divestiture will be used to pay down the \$200 million interim term loan maturing in October 2001 (See Note 7).

On July 5, 2000, the Company announced that it had entered into a definitive agreement to sell the specialty pharmacy assets of Stadtlander to ProCare Pharmacy, Inc., a subsidiary of CVS Corporation, for approximately \$124 million in cash. The transaction is structured as a sale of assets and is expected to be completed in early September 2000. The corrections division of Stadtlander, that portion of the business that provides pharmaceuticals to prison inmate populations, is not included in the sale, but management is seeking potential buyers. The net proceeds from the specialty pharmacy divestiture, the net proceeds from the future sale of Stadtlander's corrections business, and expected tax benefits to be realized from the Stadtlander divestitures are expected to be used to further reduce debt and invest in the continuing operations of the Company.

The Company has reclassified both BBMC (formerly included in the Other Businesses segment) and the Stadtlander business segment as discontinued operations in the accompanying Consolidated Financial Statements.

A summary of the Company's results relating to discontinued operations is set forth in the following table:

<i>Dollars in millions</i>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2000</b>	<b>1999</b>	<b>2000</b>	<b>1999</b>
Loss from discontinued operations	\$ (8.2)	\$ (3.2)	\$ (20.9)	\$ (1.5)
Loss on dispositions	(251.0)	-	(251.0)	-
Total	<u>\$ (259.2)</u>	<u>\$ (3.2)</u>	<u>\$ (271.9)</u>	<u>\$ (1.5)</u>

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**Loss from Discontinued Operations**

Net losses from operations increased by \$5.0 million and \$19.4 million, respectively, for the quarter and nine-months ended June 30, 2000 in comparison with the comparable fiscal 1999 periods. These increases are principally related to higher losses at Stadtlander, which has continued to experience unprofitable operations in fiscal 2000 due to low gross margins, high bad debt provisions and the costs associated with a restructuring plan. BBMC reported lower operating income primarily due to lower buy-side gross margin. Allocated interest was higher due to higher interest rates.

**Loss on Dispositions**

The Company recognized a loss on the dispositions of BBMC and Stadtlander of approximately \$251 million, net of income tax benefits of approximately \$132 million, in the three months ended June 30, 2000. Substantially all of the loss is related to the non-cash write-off of goodwill. Also included in the loss from dispositions are estimated operating losses including interest expense allocations from July 1, 2000 through the anticipated transaction closing dates. See Note 2 for further information.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**LIQUIDITY AND CAPITAL RESOURCES**

Following is a summary of the Company's capitalization at the end of the most recent quarter and fiscal year.

	<b>June 30, 2000</b>	<b>September 30, 1999</b>
Debt, net of cash	41%	43%
Equity, including the Preferred Securities	59%	57%

The decrease in the debt percentage is mainly due to a decrease in aggregate borrowings under the Company's bank credit facilities to \$755 million at June 30, 2000 from \$943 million at September 30, 1999.

On April 20, 2000, the Company replaced both its Credit Facility and Credit Agreement with the new \$1.5 billion Senior Credit Agreement. The Senior Credit Agreement consists of an \$800 million revolving facility maturing in April 2003, a \$200 million interim term loan maturing in October 2001, a \$300 million term loan maturing in March 2005 and a \$200 million term loan maturing in March 2006. Borrowings under the Senior Credit Agreement are secured by substantially all of the Company's assets. The availability of revolving loans under the Senior Credit Agreement is tied to a borrowing base formula and certain covenants; the maximum amount of revolving loans outstanding may not exceed specified percentages of the Company's eligible accounts receivable and eligible inventory. Interest accrues at specified rates based on the Company's debt ratings; such rates range from 2.5% to 3.5% over LIBOR or 1.5% over prime, with a weighted average rate of approximately 9.3% at June 30, 2000. The Senior Credit Agreement has loan covenants which require the Company to maintain certain financial statement ratios and places certain limitations on, among other things, dividend payments and capital expenditures.

On December 17, 1999, the Company entered into the Receivables Securitization Program with a bank in order to provide additional borrowing capacity for the Company. In February 2000, the Receivables Securitization program was amended to increase the funding limit to \$350 million. Through the Receivables Securitization Program, BBDC sells, on an ongoing basis, certain of its accounts receivable to Blue Hill, a 100%-owned special purpose subsidiary. Blue Hill, in turn, sells an undivided percentage ownership interest in such receivables to financial institutions. The program qualifies for treatment as a sale of assets under SFAS No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities". As of June 30, 2000, the Company had received net proceeds of \$329 million from the sale of such receivables under the Receivables Securitization Program, and this amount is reflected as a reduction of accounts receivable in the accompanying consolidated balance sheet.

On May 26, 1999, the Company's Trust issued 12,000,000 shares of its Preferred Securities at \$25 per security. The proceeds of such issuances were invested by the Trust in \$300 million aggregate principal amount of the Company's Subordinated Notes due June 30, 2039. The Subordinated Notes represent the sole assets of the Trust and bear interest at the rate of 7.80% per annum, payable quarterly, and are redeemable at the option of the Company beginning in May 2004 at 100% of the principal amount thereof. The obligations of the Trust related to the Preferred Securities are guaranteed by the Company.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

The Company's 1996 Registration Statement, which became effective on March 27, 1996, allows the Company to sell senior and subordinated debt or equity securities to the public from time to time up to an aggregate maximum principal amount of \$400 million.

See Notes 6, 7 and 8 of the accompanying Notes to Consolidated Financial Statements for further information regarding the Receivable Securitization Program, The Senior Credit Agreement, Credit Agreement, the Credit Facility, the Preferred Securities and the 1996 Registration Statement.

On May 9, 2000, the Company declared a quarterly cash dividend of \$0.01 per share on the Company's Common Stock that was paid on June 5, 2000 to shareowners of record on May 15, 2000. Quarterly cash dividends of \$0.075 per share on the Company's Common Stock were paid on December 1, 1999 and March 5, 2000 and recorded in the first and second quarters of fiscal 2000, respectively.

On August 10, 2000, the Company declared a quarterly cash dividend of \$0.01 per share on the Company's Common Stock, payable September 5, 2000 to shareowners of record on August 21, 2000. This cash dividend will be recorded in the fourth quarter of fiscal 2000.

On September 24, 1998, the Company declared a \$0.075 per share quarterly cash dividend on the Company's Common Stock that was paid on December 1, 1998 to shareowners of record as of November 2, 1998. This \$0.075 payment constituted the Company's dividend for the first quarter ended December 31, 1998. For accounting purposes, this cash dividend was recorded in the fourth fiscal quarter ended September 30, 1998, resulting in a larger than usual dividend in that quarter and no dividend during the quarter ended December 31, 1998. Quarterly cash dividends of \$0.075 per share of Common Stock were paid on March 1, June 1, and September 1, 1999 and recorded in the second, third and fourth quarters, respectively, of fiscal 1999.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

The Company's cash flows during the first nine months of fiscal 2000 and 1999 are summarized in the following table:

<i>Dollars in millions</i>	<b>Nine Months Ended June 30,</b>	
	<b>2000</b>	<b>1999</b>
Earnings from continuing operations, excluding non-cash charges	\$195.9	\$ 156.4
Increases in operating assets and liabilities	(88.3)	(247.9)
Cash flows from operating activities	107.6	(91.5)
Acquisition of businesses, less cash acquired	-	(46.2)
Property acquisitions	(61.1)	(21.1)
Net proceeds from sale of accounts receivable	329.0	-
Net proceeds from (repayment of) debt and other obligations	(236.2)	553.2
Cash dividends on Common Stock	(21.5)	(26.0)
Distribution on preferred securities	(17.6)	(2.2)
Discontinued operations	(17.5)	(339.8)
Other – net	(7.6)	7.9
Net increase in cash and cash equivalents	\$ 75.1	\$ 34.3

For the nine months ended June 30, 2000, the Company generated \$107.6 million of positive cash flows from operations, compared with \$91.5 million of negative cash flows from operations in the comparable fiscal 1999 period. This improvement was primarily attributable to a lower increase in working capital requirements in fiscal 2000.

During fiscal 2000, the Company has paid down its outstanding debt, principally with the proceeds of the Asset Securitization program. During fiscal 1999, the Company increased its borrowings from debt and trust preferred securities, principally to finance acquisitions. The \$339.8 million cash outflow from discontinued operations in fiscal 1999 is primarily comprised of the cash portion of the Stadtlander purchase price and the payoff of Stadtlander's pre-acquisition bank debt.

The Company believes that internally-generated cash flows, funds available under the Senior Credit Agreement, the Receivables Securitization Program, and funds potentially available in the private and public capital markets will be sufficient to meet anticipated cash and capital requirements. However, actual results could differ from this forward-looking statement as a result of unanticipated capital requirements or an inability to access capital on acceptable terms when, and if, necessary. Such access to capital may be more difficult and/or expensive in the future due to the downgrading of the Company's credit ratings in November and December 1999 and February 2000.

Property acquisitions relate principally to the purchase of warehouse, pharmacy and data processing equipment, and to the purchase of the Company's previously-leased Corporate headquarters building in October 1999.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**BUSINESS ACQUISITIONS**

On April 26, 1999, the Company acquired PharMerica, one of the nation's largest providers of pharmaceutical products and pharmacy management services to long-term care and alternate site settings, headquartered in Tampa, Florida. The Company issued approximately 24.7 million shares of Common Stock valued at approximately \$665 million, acquired net assets (excluding debt) at fair value of approximately \$315 million, assumed debt of approximately \$600 million and incurred costs of approximately \$10 million. The Company recorded goodwill of approximately \$960 million in the transaction.

On February 10, 1999, the Company acquired J.M. Blanco, Puerto Rico's largest pharmaceutical distributor, headquartered in Guaynabo, Puerto Rico, for a cash purchase price of approximately \$30 million. The Company acquired net assets (excluding debt) at fair value of approximately \$24 million, assumed debt of approximately \$22 million and incurred costs of approximately \$1 million. The Company recorded goodwill of approximately \$29 million in the transaction.

On January 21, 1999, the Company acquired Stadtlander, a national leader in disease-specific pharmaceutical care delivery for transplant, HIV, infertility and serious mental illness patient populations and a leading provider of pharmaceutical care to the privatized corrections market, headquartered in Pittsburgh, Pennsylvania. The Company paid approximately \$195 million in cash and issued approximately 5.7 million shares of Common Stock, previously held as Treasury shares, valued at approximately \$140 million. The Company acquired net assets (excluding debt) at fair value of approximately \$40 million, assumed debt of approximately \$100 million and incurred costs of approximately \$10 million. The Company recorded goodwill of approximately \$405 million in the transaction.

On December 31, 1998, the Company acquired MII, a pre-filler of pharmaceuticals for oncology centers, located in Tampa, Florida. The Company issued approximately 200,000 shares of Common Stock, previously held as Treasury shares, valued at approximately \$6.0 million, acquired net assets at fair value of approximately \$0.1 million and incurred costs of \$0.2 million. The Company recorded goodwill of approximately \$6.1 million in the transaction.

Each of the aforementioned acquisitions was accounted for as a purchase for financial reporting purposes. The Company is in disagreement with the seller and the seller's independent auditors regarding the valuation of the net assets of Stadtlander. Notwithstanding the pending sale of the specialty assets of Stadtlander (see Note 2), the Company will not assign to the purchaser of the assets its claims against the seller. See Part II, Item 1 entitled "Legal Proceedings."

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Continued)**

**NEW ACCOUNTING PRONOUNCEMENTS**

In December 1999, the United States Securities and Exchange Commission issued Staff Accounting Bulletin No. 101 ("SAB 101"), "Revenue Recognition in Financial Statement." SAB 101 provides guidance on applying generally accepted accounting principles to revenue recognition issues in financial statements. The Company will be required to adopt SAB 101 in the first quarter of fiscal year 2001. The Company is in the process of evaluating the effect, if any, that the adoption of SAB 101 will have on its consolidated results of operations and financial position.

**ITEM 3. Quantitative and Qualitative Disclosures About Market Risk**

The Company's most significant "market risk" exposure is the effect of changing interest rates. The Company manages its interest expense by using a combination of fixed and variable-rate debt. At June 30, 2000, the Company's debt consisted of approximately \$589.4 million of fixed-rate debt with a weighted average interest rate of 7.86% and \$754.5 million of variable-rate debt (consisting principally of borrowings under the bank Senior Credit Agreement) with a weighted average interest rate of 9.26%. The amount of the variable-rate debt fluctuates during the year based on the Company's cash requirements. If interest rates on the Senior Credit Agreement were to increase by 93 basis points (one-tenth of the rate at June 30, 2000), the impact on pre-tax earnings from continuing operations during the Company's third quarter of fiscal 2000 would be approximately \$1.0 million (after allocation to discontinued operations).

The Company is evaluating various financial instruments which would mitigate a portion of its exposure to variable interest rates.

The Company also believes that its interest rate exposure may be somewhat mitigated due to the favorable effect which inflation may have on the Company, specifically, manufacturers' price inflation which may accelerate concurrent with a general increase in interest rates, to the extent that the Company can take advantage of such inflation in purchasing and selling inventory.

## **BERGEN BRUNSWIG CORPORATION**

### **PART II. OTHER INFORMATION**

#### **ITEM 1 LEGAL PROCEEDINGS**

There have been no new material matters in the legal proceedings as previously reported in Part II, Item 1 of the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2000 filed with the Securities and Exchange Commission on May 15, 2000 except as otherwise might be set forth below.

##### ***Section 1.***

##### **State and Opt-Out Antitrust Actions**

1.1 As previously reported, between August 3, 1993 and February 14, 1994, the Company, along with various other pharmaceutical industry-related companies, was named as a defendant in eight separate state antitrust actions in three courts in California. These lawsuits are more fully detailed in "Item 1 - Legal Proceedings" of Part II of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1994 as filed with the Securities and Exchange Commission and is incorporated herein by reference. In April 1994, these California state actions were all coordinated as Pharmaceutical Cases I, II and III, and assigned to a single judge in San Francisco Superior Court. On August 22, 1994, a Consolidated Amended Complaint ("California Complaint"), which supersedes and amends the eight prior complaints, was filed in these actions.

The California Complaint alleges that the Company and 35 other pharmaceutical industry-related companies violated California's Cartwright Act, Unfair Practices Act, and the Business and Professions Code unfair competition statute. The California Complaint alleges that defendants jointly and separately engaged in secret rebating, price fixing and price discrimination between plaintiffs and plaintiffs' alleged competitors who sell pharmaceuticals to patients or retail customers. Plaintiffs seek, on behalf of themselves and a class of similarly situated California pharmacies, injunctive relief and treble damages in an amount to be determined at trial. The judge struck the class allegations from the Unfair Practices Act claims.

1.2 As previously reported, on May 2, 1994, the Company and Durr Drug Company were named as defendants, along with 25 other pharmaceutical related-industry companies, in a state antitrust class action in the Circuit Court of Greene County, Alabama entitled Durrett v. UpJohn Company, et al., No. 94-029 ("Alabama Complaint"). The Alabama Complaint alleges on behalf of a class of Alabama retail pharmacies and a class of Alabama consumers that the defendants conspired to discriminatorily fix prices to plaintiffs at artificially high levels. The Alabama Complaint seeks injunctive relief and treble damages. On June 25, 1999, the Alabama Supreme Court held that plaintiffs' claims are not valid under the Alabama antitrust statute. On November 29, 1999 the trial court dismissed the entire action in accordance with the mandate of the Alabama Supreme Court. Similar actions were also filed against the Company and other wholesalers and manufacturers in Mississippi, Montgomery Drug v. UpJohn, et. al., No. 97-0103, and in Tennessee, Graves v. Abbott, et. al., No. 25,109-II. The various state actions have not yet been set for trial.

1.3 On October 21, 1994, the Company entered into a sharing agreement with five other wholesalers and 26 pharmaceutical manufacturers. Among other things, the agreement provides that: (a) if a judgment is entered against both the manufacturer and wholesaler defendants, the total exposure for joint and several liability of the Company is limited to \$1.0 million; (b) if a settlement is entered into by, between, and among the manufacturer and wholesaler defendants, the Company has

no monetary exposure for such settlement amount; (c) the six wholesaler defendants will be reimbursed by the 26 pharmaceutical defendants for related legal fees and expenses up to \$9.0 million total (of which the Company will receive a proportionate share); and (d) the Company is to release certain claims which it might have had against the manufacturer defendants for the claims presented by the plaintiffs in these cases. The agreement covers the Federal court litigation, previously resolved via a grant of a directed verdict in favor of the Company and 30 other pharmaceutical industry-related companies, as well as the cases which have been filed in various state courts. In 1996, the class plaintiffs filed a motion for approval of a settlement with 12 of the manufacturer defendants, which would result in dismissal of claims against those manufacturers and a reduction of the potential claims against the remaining defendants, including those against the Company. The Court granted approval for the settlement. In 1998, an additional four of the manufacturer defendants settled. The effect of the settlements on the sharing agreement is that the Company's maximum potential loss would be \$1.0 million, regardless of the outcome of the lawsuits, plus possible legal fee expenses in excess of the Company's proportionate share of the \$9.0 million reimbursement of such fees or any additional amounts to be paid by the manufacturer defendants.

1.4 In addition to the above-mentioned state court actions in Sections 1.1 and 1.2, the Company and other wholesale defendants have been added as defendants in a series of related antitrust lawsuits brought by certain independent pharmacies who have opted out of the class action cases. After a successful motion by the Company and other wholesalers, the damage period in these cases has been limited to October 1993 to the present. These lawsuits are also covered by the sharing agreement described above. The parties are currently engaged in expert discovery, which will be followed by motions for summary judgment by the wholesaler defendants. Plaintiffs in these suits have requested remand to various federal courts nationwide for purposes of trial. No remand order has been issued and no trial dates have been set. On July 17, 2000, the wholesaler defendants filed a motion for summary judgment. Plaintiffs have not yet responded.

### **PharMerica Securities Litigation**

1.5 As previously reported, in November 1998 and February 1999, two putative securities class actions were filed against PharMerica and certain individuals in the United States District Court for the Middle District of Florida. The proposed classes consist of all persons who purchased or acquired stock of PharMerica between January 7, 1998 and July 24, 1998. The complaints seek monetary damages but do not specify an amount. In general, the complaints allege that the defendants made material omissions by withholding from the market information related to the costs associated with certain acquisitions. The complaints allege claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934. A Consolidated Amended Complaint has been filed, and PharMerica and other defendants intend to move to dismiss.

### **PharMerica OIG Investigation**

1.6 As previously reported, prior to the acquisition of PharMerica by the Company, the United States Department of Health and Human Services ("HHS"), during the course of a Medicare Audit of various nursing homes, requested PharMerica to produce records related to intravenous pharmaceuticals provided to particular nursing homes in 1997 and 1998. PharMerica cooperated with the audit and complied with the request. PharMerica has learned that HHS auditors allege that during the 1997-98 time frame, certain nursing homes, primarily operating in Texas, improperly billed Medicare for intravenous pharmaceuticals and related services. The government has been made aware that PharMerica did not bill the Medicare program for the goods and services it sold to nursing homes. On or about June 1, 2000, the government filed a lawsuit against one former chain of thirteen Texas nursing homes, Sensitive Care, in which the government alleges that Sensitive Care filed false claims for Medicare reimbursement. The government has not quantified the extent of any damages it allegedly suffered. Sensitive Care has filed for bankruptcy in the Northern District of Texas, thus, the

government's complaint against Sensitive Care has also been filed there, as a creditor's claim. In its Answer to the government's lawsuit, Sensitive Care has denied liability, but has further alleged that PharMerica is liable for any false claim liabilities that may be imposed against Sensitive Care under an indemnification clause contained in the pharmacy services contract(s) between PharMerica and the nursing homes Sensitive Care formerly operated. In August of 2000, PharMerica expects to be served with a copy of Sensitive Care's third-party complaint seeking indemnification. PharMerica intends to defend vigorously against the imposition of any liability against it for fraudulent billings that an independent third-party organization, like Sensitive Care, may have submitted to the government.

### **OIG Investigation of Stadtlander**

1.7 As previously reported, a United States federal investigation of Stadtlander with respect to possible violations of the Medicare and Medicaid provisions of the Social Security Act is being conducted ("OIG Investigation"). The commencement of the investigation predated the ownership of Stadtlander by Counsel Corporation, the entity that sold Stadtlander to the Company. More specifically, the Office of Inspector General ("OIG") is investigating whether Stadtlander properly issued credits or refunds to the Medicare and/or Medicaid programs in cases where such credits or refunds may have been due. The Company has been advised that while owned by Counsel Corporation, Stadtlander cooperated fully with the authorities investigating this matter, and the Company continues to do so. As recently announced, the Company entered into an Asset Purchase Agreement ("Stadtlander Sale Agreement") with ProCare Pharmacy, Inc. and certain of its designated affiliates to sell substantially all of the assets and business operations of Stadtlander (except for the Corrections Division). Notwithstanding the anticipated completion of the sale of such assets and business operations, according to the terms of the Agreement, the Company continues to remain responsible for any and all fees, costs and expenses and any resulting liability arising from matters such as the OIG Investigation.

1.8 Although the amount of liability at June 30, 2000 with respect to the referenced proceedings in Section 1 above cannot be ascertained, in the opinion of the management, any resulting liability will not have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

## **Section 2.**

### **Bergen Brunswig Corporation vs. Counsel Corp.**

2.1 As previously reported, on October 14, 1999, the Company and certain of its subsidiaries commenced an action in the Los Angeles County Superior Court of the State of California against Counsel Corporation, Stadt Holdings, Inc., and certain of their officers and directors (the "Counsel defendants") in connection with the Company's acquisition of Stadtlander Drug Co., Inc. and its subsidiaries ("Stadtlander") on January 21, 1999. In the Counsel action, the Company alleges that the Counsel defendants devised and perpetrated a joint venture scheme with the common purpose of selling Stadtlander at a grossly inflated price. The Company contends that, by means of fraudulent adjusting journal entries and related misrepresentations and omissions, the Counsel defendants provided inaccurate financial statements and other false and misleading information to the Company in order to fraudulently induce it to consummate the Stadtlander acquisition for an excessive sales price.

In its complaint, the Company asserts causes of action against the defendants under California's securities and unfair competition laws, as well as common law and statutory claims for fraud. The Company requests the imposition of a constructive trust, an accounting, restitution and disgorgement of the defendants' ill-gotten profits and other damages, as well as other relief permitted under law, in addition to pre-judgment and post-judgment interest, costs and attorneys' fees.

Certain of the defendants made a motion to compel arbitration of the Company's claims against them, which the Court denied in January 2000. The same defendants then made a renewed motion to compel arbitration, which the Court was tentatively inclined to deny on April 28, 2000. On June 6, 2000, the Counsel defendants withdrew their arbitration request. Apart from the Counsel defendants' arbitration motion, no other motions have been filed or served by any party to date. No discovery has been commenced by any party to date. The parties are negotiating a proposed case management order to govern pleading, law and motion, and discovery issues in the case. No trial date has been set yet. The Company filed an amended complaint on July 28, 2000, wherein it provided additional details concerning the accounting irregularities committed by the Counsel defendants in connection with the sale of Stadtlander to the Company.

The Company believes its claims against the Counsel defendants have substantial merit, and intends to prosecute its claims vigorously against the Counsel defendants. However, due to the incipient stage of the litigation, its ongoing status, and the necessary uncertainties involved in all litigation, the Company does not believe it is feasible at this time to assess the likely outcome of the litigation, the timing of its resolution, or its ultimate impact, if any, on the Company's financial condition, results of operations and cash flows.

Additionally, it is not feasible at this time to estimate the impact of this litigation on the Company in light of the Company's recent announcement to sell certain Stadtlander assets and business operations pursuant to the Stadtlander Sale Agreement. The Company does, however, intend to continue to pursue the matter as described above beyond the closing date of such sale. The terms of the Stadtlander Sale Agreement do not require the Company to assign its claims to the purchasers and, accordingly, any costs and damages recovered by the Company will inure to the Company's benefit.

### **Bergen Securities, Trust and Derivative Actions**

2.2 As previously reported, following the Company's October 14, 1999 announcement that it would not meet analysts' consensus earnings estimates for its fourth quarter and fiscal year ended September 30, 1999, due to, in part, lower than expected results at Stadtlander and PharMerica, and following the Company's disclosures, in its complaint against the Counsel defendants, reported by the press on October 15, 1999, regarding the accounting irregularities involved in the Stadtlander acquisition, 10 purported shareholder class action lawsuits were commenced against the Company and certain of its officers and directors in federal court in California. By order of the Court, pursuant to the parties' stipulation, the 10 cases have been consolidated into a single action in the Southern Division of the United States District Court for the Central District of California (the "Bergen securities action").

The Bergen securities action is purportedly brought on behalf of a class of the Company's shareholders who purchased or otherwise acquired the Company's common stock from March 16, 1999 through October 14, 1999, and were allegedly damaged thereby. The Bergen securities action asserts, among other things, various similar claims under sections 11, 12 and 15 of the Securities Act 1933, and under sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. In general, the Bergen securities action alleges that the Company and certain of its officers and directors made material omissions and misrepresentations in their PharMerica Proxy Statement/Prospectus, and in other public statements prior to October 14, 1999, by failing to disclose sooner certain accounting irregularities the Company uncovered at Stadtlander after its acquisition, and by allegedly failing to disclose sooner that the reserves for uncollectible accounts receivable at PharMerica were allegedly understated by approximately \$35 million.

On or about April 25, 2000, plaintiffs filed and served a consolidated amended complaint in the Bergen securities action. On June 23, 2000, the Company filed and served a motion to dismiss plaintiffs' consolidated amended complaint in the Bergen securities action. Pursuant to stipulation among the parties, subject to order by the Court, plaintiffs' response to the Company's motion to dismiss

the action was filed on or before August 3, 2000. The hearing currently is scheduled to take place on August 28, 2000.

In addition to the Bergen securities action, two separate lawsuits alleging violations of certain federal securities laws were commenced in federal court in California, and another lawsuit was commenced in federal court in Delaware, that name as defendants, along with the Company and certain of its officers and directors, Bergen Capital Trust I (the "Trust"), a wholly-owned subsidiary of the Company, as well as various investment banks.

By order of the Court, pursuant to the parties' stipulation, the Trust securities cases also have been consolidated into a single action in the Southern Division of the United States District Court for the Central District of California (the "Trust securities action"), and have been coordinated with the Bergen securities action as related cases for pre-trial purposes. The Trust securities action purportedly is brought on behalf of a class of persons who purchased shares of the Trust's Preferred Securities pursuant to the May 26, 1999 offering of such securities, including, in two of the cases, persons who thereafter acquired any such Preferred Securities on the open market prior to October 14, 1999.

The Trust securities action asserts claims under sections 11, 12 and 15 of the Securities Act of 1933, as well as claims under sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. In general, the Trust securities action contend that the Trust and the Company failed to fulfill a purported duty to disclose in the Company's 1999 Registration Statement, and in related offering materials with respect to the issuance of the Trust's Preferred Securities, that the financial data provided by the Company was supposedly unreliable because Stadtlander was suffering from accounting irregularities as a result of the fraud of the Counsel defendants. The complaint also alleges that the Company should have disclosed PharMerica's problems arising from uncollectible accounts receivable sooner than it did.

On or about June 8, 2000, Plaintiffs filed and served a consolidated amended complaint in the Trust securities action. Pursuant to stipulation among the parties, subject to approval by the Court, the Company's motion to dismiss the Trust securities action is due to be filed and served on or before August 1, 2000. Plaintiff's opposition papers are due on or before September 15, 2000. The Company's reply papers are due on or before October 2, 2000. The hearing on the motion will take place on or after October 9, 2000, subject to further stipulation or order by the Court.

The Plaintiffs in the Bergen securities action and the Trust securities action seek damages in an unspecified amount, and/or rescission, as well as pre-judgment and post-judgment interest, costs and attorneys' fees. Pursuant to court order, "lead plaintiffs" and "lead counsel" have been appointed in the Bergen securities action and the Trust securities action under the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). Except as set forth above, no motions are currently pending in any of the actions. No discovery has been commenced by any party to date in any of the actions, except for two third-party subpoenas issued to preserve evidence pending resolution of the pleadings. No status conferences are currently set in any of the actions. No trial dates have been set in any of the actions.

On March 15, 2000, the Company accepted service of a purported shareholder derivative action pending in the Orange County Superior Court (the "Bergen derivative action"). The Bergen derivative action asserts several purported state law causes of action against the directors and certain senior officers of the Company (the "individual defendants"), and also against the Company (as a nominal defendant), alleging, in general terms, various alleged fiduciary breaches and related claims arising from the alleged failure of the individual defendants to conduct adequate due diligence before proceeding with the Stadtlander acquisition and causing Bergen to allegedly violate federal securities laws, as alleged in the Bergen securities action and Trust securities action.

On Thursday, April 13, 2000, the Company and the individual defendants removed the Bergen derivative action to federal court, on the ground that the purported state law causes of action asserted in the complaint all derive from, and depend upon the resolution of, substantial questions of federal securities law. The Company and the individual defendants have requested that that the derivative complaint be consolidated and/or coordinated with the Bergen securities action and the Trust securities action. To that end, the Bergen derivative action has been assigned to the same Court in which the Bergen securities action and the Trust securities action are pending.

The Company has filed and served a motion to dismiss the complaint in the Bergen derivative action. The plaintiff has filed an opposition to that motion, to which the Company has replied. The plaintiff also has filed and served a motion to remand the Bergen derivative action to the Orange County Superior Court. The Company has opposed plaintiff's motion to remand, to which plaintiff has replied. The Court issued an Order dated August 2, 2000, denying the plaintiff's motion to remand and taking under submission the Company's motion to dismiss.

The Company intends to vigorously defend against the claims asserted in the various purported shareholder class action lawsuits and the Bergen derivative action. However, due to the incipient stage of the litigation, its ongoing status, and the necessary uncertainties involved in all litigation, the Company does not believe it is feasible at this time to assess the likely outcome of the foregoing litigation, the timing of its resolution, or its ultimate impact, if any, on the Company's financial condition, results of operations and cash flows.

2.3 The proceedings referenced in Section 2 are in their early stages and discovery has not been completed. The Company does not believe it is currently feasible to predict or determine the outcome or resolution of these proceedings, or to estimate the amounts of, or potential range of, loss, if any, with respect to these proceedings.

## **BERGEN BRUNSWIG CORPORATION**

### **PART II. OTHER INFORMATION**

#### **ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

##### **(a) EXHIBITS**

10(a) Stock Purchase Agreement dated as of June 23, 2000, by and among Bergen Brunswig Medical Corporation, Ransdell Surgical, Inc., Durr Fillauer Medical Inc., Bergen Brunswig Corporation, Allegiance Corporation and Cardinal Health Inc.

10(b) Asset Purchase Agreement dated as of July 3, 2000, by and among ProCare Pharmacy, Inc., Stadtlander Operating Company, L.L.C., Stadtlander Licensing Company, LLC, Stadtlander Drug of California, LP, Stadtlander Drug of Hawaii, LP and Bergen Brunswig Corporation.

27 Financial Data Schedule for the nine months ended June 30, 2000.

\*99 Statement Regarding Forward-Looking Information is set forth as Exhibit 99(a) to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1999.

\* Document has heretofore been filed with the Securities and Exchange Commission and is incorporated herein by reference and made a part hereof.

##### **(b) REPORTS ON FORM 8-K:**

There were no reports filed on Form 8-K during the three months ended June 30, 2000.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

### **BERGEN BRUNSWIG CORPORATION**

By /s/ Robert E. Martini  
Robert E. Martini  
Chairman of the Board and  
Chief Executive Officer

By /s/ Neil F. Dimick  
Neil F. Dimick  
Executive Vice President,  
Chief Financial Officer  
(Principal Financial Officer and  
Principal Accounting Officer)

August 11, 2000

**BERGEN BRUNSWIG CORPORATION**

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27	Financial Data Schedule for the nine months ended June 30, 2000.	166
99*	Statement Regarding Forward-Looking Information is set forth as Exhibit 99(a) to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1999.	
*	Document has heretofore been filed with the Securities and Exchange Commission and is incorporated herein by reference and made a part hereof.	

## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT, dated as of June 23, 2000, is by and among BERGEN BRUNSWIG MEDICAL CORPORATION, a Delaware corporation having a place of business at 4000 Metropolitan Drive, Orange, California 92868 ("BBMC"), RANDELL SURGICAL, INC, a Kentucky corporation ("RSI" and, collectively with BBMC, the "Corporations"), DURR FILLAUER MEDICAL, INC., a Delaware corporation (the "Subsidiary Seller"), BERGEN BRUNSWIG CORPORATION, a New Jersey corporation having its principal place of business at 4000 Metropolitan Drive, Orange, California 92868 (the "Parent Seller" and, collectively with the Subsidiary Seller, the "Sellers"), ALLEGIANCE CORPORATION, a Delaware corporation having its principal place of business at 1430 Waukegan Road, McGaw Park, Illinois 60085 (the "Purchaser") and CARDINAL HEALTH, INC., an Ohio corporation having its principal place of business at 5555 Glendon Court, Dublin, Ohio 43016 (the "Parent Purchaser" and, together with the Purchaser, the "Purchasers").

### RECITALS

1. The Parent Seller is the legal and beneficial owner of all of the issued and outstanding capital stock of the Subsidiary Seller and RSI. The Subsidiary Seller is the legal and beneficial owner of all of the issued and outstanding capital stock of BBMC.

2. The Sellers desire to sell and transfer to the Purchasers, and the Purchasers desire to purchase from the Sellers, all of the outstanding shares of capital stock of the Corporations, all as more specifically provided herein.

3. The Boards of Directors (or Executive Committees of such Boards of Directors) of the Sellers, the Corporations and the Purchasers have determined that it is in the best interests of the respective corporations to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

### ARTICLE I

#### Certain Definitions and Other Matters

Section 1.1 *Certain Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below.

"Action" means any administrative, judicial or other legal arbitration, hearing, investigation, litigation, proceeding or suit before any Governmental Authority or arbitrator.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the ability to elect the members of the board of directors or other governing body of a Person and the terms "controlled" and "controlling" have meanings correlative thereto.

"Agreement" means this Stock Purchase Agreement.

"Assignment of Marks" means the assignment of trademarks and service marks, made by the Sellers in favor of BBMC, in the form and substance of the assignment annexed hereto as Appendix 1.8A.

"Assignment of Lease" means the assignment and assumption of the real property lease, made by the Parent Seller in favor of BBMC, in the form and substance of the assignment and assumption agreement set forth in Appendix 1.7A annexed hereto.

"Assignment of Data Center Assets" means the assignment of Data Center assets, subject to the assumption of related liabilities, made by the Parent Seller or one of its Subsidiaries (other than a Consolidated Company) in favor of BBMC, in the form and substance of the assignment and assumption agreement annexed hereto as Appendix 1.8C.

"BBMC Common Stock" means the common stock, par value \$0.01 per share, of BBMC.

"Borrowing Rate" means the prime rate as published in The Wall Street Journal from time to time during the period from the Closing Date through the date of payment or refund as determined pursuant to Section 2.5.2.

"Business Day" means a day on which national banks are open for business in New York City.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"Claims" means any and all claims, demands, Actions, causes of action and legal proceedings.

"Closing Date Customer" means any health care provider which, during the twelve months ending on the last day of the calendar month preceding the calendar month in which the Closing Date occurs, purchased, in the case of an acute care facility, more than \$500 per licensed bed, and in all other cases, more than \$1,000, in products or supplies from the Consolidated Companies.

"Closing Date Non-Customer" means any health care provider that is not a Closing Date Customer.

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

"Competing Business" means the business of selling or distributing Competing Products within the United States and its territories to health care providers, it being understood that neither a consumer, a retail pharmacy or a retail store containing a retail pharmacy is a health care provider; *provided, however*, that none of the following shall be deemed Competing Business:

(a) the sale or distribution by any Seller Unit of Competing Products, provided that the sales of Competing Products by such Seller Unit for a given fiscal quarter of such Seller Unit (or, for the fiscal quarter in which the Closing occurs, from the Closing Date through the last day of such quarter) do not exceed the Revenue Limit for such

Seller Unit, and in the case of BBDC as the Seller Unit, the sales of Competing Products to any single acute care provider (as distinguished from a buying group or any combination of acute care providers) do not exceed, during such fiscal quarter (or, for the fiscal quarter in which the Closing occurs, during the period from the Closing Date through the last day of such quarter), more than \$125 per licensed bed of such provider;

(b) acquiring any equity or other ownership interest in an entity that sells or distributes Competing Products, provided that either (x)(i) such equity or other ownership interest does not exceed twenty percent (20%) of the total outstanding voting equity of such entity, (ii) such equity or other ownership interest does not give the Parent Seller and its Subsidiaries control over the Board of Directors (or comparable governing body of an entity that is not organized as a corporation) of such entity and (iii) the name of such entity does not include Parent Seller's name or any derivation thereof, or (y) such entity is a Small Entity;

(c) lending money, extending or advancing credit to, or providing management, consulting or administrative services to, developing, launching or operating, or otherwise assuming control (other than by acquisition of an equity or other ownership interest) of, an entity that sells or distributes Competing Products, provided that (i) such entity is a Small Entity and (ii) if the Parent Seller or its Subsidiaries develops, launches, operates or so assumes control of such an entity, the sales of Competing Products by such entity for a given fiscal quarter of such entity (or, for the fiscal quarter in which the Closing occurs, from the Closing Date through the last day of such quarter) do not exceed 10% of such entity's total dollar sales for such fiscal quarter (or, for the fiscal quarter in which the Closing occurs, for the period from the Closing Date through the last day of such quarter); or

(d) commencing 60 days after the Closing Date, entering into or participating in a Permitted Joint Program, provided that (x) the Parent Seller and its Subsidiaries do not at any time during the three year period following the Closing Date engage in Selling Efforts directed at Closing Date Customers, (y) during the period from the 60<sup>th</sup> day after the Closing Date through the 180<sup>th</sup> day after the Closing Date, the Parent Seller and its Subsidiaries do not participate in a Permitted Joint Program in which any co-venturer in such Permitted Joint Program engages in Selling Efforts directed at Closing Date Customers on behalf of such Permitted Joint Program (it being understood that selling efforts by such co-venturer directed to Closing Date Customers are not precluded by this clause (y) as long as the co-venturer does not market the Permitted Joint Program during the period covered by this clause (y)), and (z) during the period from the 60<sup>th</sup> day after the Closing Date through the 90<sup>th</sup> day after the Closing Date, the Parent Seller and its Subsidiaries do not engage in Selling Efforts directed at any Closing Date Non-Customer unless such Closing Date Non-Customer initiates communications with the Parent Seller or its Subsidiaries regarding the participation by such Closing Date Non-Customer, the Parent Seller or its Subsidiaries in a Permitted Joint Program.

"Competing Products" means medical, surgical or laboratory supplies and products other than supplies and products (a) which contain, are packaged, by a Person other than the Parent Seller or its Subsidiaries, with, or are otherwise customarily sold as a unit with, any pharmaceutical, biological, plasma, blood, injectable, intravenous fluid, intravenous solution, vaccine, medicine, oncology or renal supplies or products, or (b) that are purchased from Purchasers or any of their Subsidiaries.

"Consolidated Companies" means the Corporations and their Subsidiaries.

"Copyright Assignment and Assumption Agreement" means the assignment of copyrights, made by the Sellers in favor of BBMC, and the assumption by BBMC of certain related liabilities, in the form and substance of the assignment and assumption agreement annexed hereto as Appendix 1.8B.

"CPA" means Arthur Andersen & Co.

"Credit Facility" has the meaning ascribed to such term in Section 1 of the Corporations' Disclosure Schedule.

"Due Date" means the due date, including applicable extensions.

"Encumbrances" means security interests, liens, encumbrances, claims, options, charges, rights of first refusal, and restrictions of any kind, including any restrictions on use, voting, transfer, receipt of income or exercise of any other attributes of ownership, but excluding restrictions on the transfer of securities arising pursuant to the Securities Act of 1933, as amended, or pursuant to applicable state securities laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Wilmington Trust Company or such other Person as shall be approved by the Parent Purchaser and the Parent Seller in the event that Wilmington Trust Company cannot or does not serve as Escrow Agent hereunder.

"Escrow Agreement" means an escrow agreement, among the Sellers, the Purchasers and the Escrow Agent, substantially in the form and substance of the escrow agreement annexed hereto as Appendix 1.1, subject to such changes as the Escrow Agent shall request and the Sellers and Purchasers shall accept on or before the Closing Date, such acceptances not to be unreasonably withheld.

"Estimated Differential" means the Parent Seller's good faith estimate of the difference between the Consolidated Companies' Net Asset Value as of the Closing Date determined in accordance with Section 2.5 and the March 31 Value. It is understood that, if the estimated Consolidated Companies' Net Asset Value as of the Closing Date is greater than the March 31 Value, the Estimated Differential will be a positive number, and, if the estimated Consolidated Companies' Net Asset Value as of the Closing Date is less than the March 31 Value, the Estimated Differential will be a negative number.

"GAAP" means generally accepted accounting principles as in effect in the United States, as applied consistent with the prior practices of the Consolidated Companies and the Parent Seller.

"Governmental Authority" means any national, federal, state, provincial, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, any multinational organization or body, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory, taxing or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions.

"HSR Authority" means the FTC and/or the Antitrust Division.

"Income Tax" means any Tax based upon or measured by income or gain.

"Independent Accountant" means a nationally recognized independent public accounting firm which does not currently audit the Sellers or the Purchasers, or an Affiliate of either, as shall be agreed upon by the Parent Seller and the Parent Purchaser.

"License Agreement" means the non-exclusive license agreement among the Sellers, the Corporations and the Purchasers, providing for the use of certain trade names by the Consolidated Companies, in the form and substance of the license annexed hereto as Appendix 1.9.

"March 31 Value" means \$210,568,300.

"Material Adverse Change" means, with respect to a Person, a material adverse change in the business, operations, condition (financial or otherwise), properties, assets, liabilities or results of operations of such Person and its Subsidiaries, taken as a whole.

"Net Asset Value" means the total assets of the Consolidated Companies, as determined in accordance with Section 2.5.4, less the total liabilities of the Consolidated Companies, as determined in accordance with Section 2.5.5; *provided, however*, that (a) those assets and liabilities associated with the UNITI System to the extent set forth on Appendix 1.5 annexed hereto (the "Transfer UNITI Items") shall be excluded from the calculation of the Net Asset Value, (b) the Transfer Assets shall be deemed to be an asset of the Consolidated Companies, including the leasehold improvements and security deposits relating to the Transfer Lease, and (c) all assets and liabilities associated with consolidated, combined or unitary Taxes, and all assets and liabilities for deferred Taxes established to reflect timing differences between book and Tax income, shall be excluded from the calculation of the Net Asset Value.

"Order" means that certain order of the United States District Court for the District of Columbia, dated July 31, 1998, Civil Nos. 98-595 and 98-596, which, among other things, stated that the Parent Purchaser was prohibited from acquiring assets of the Parent Seller.

"Ordinary Course of Business" means actions that are (a) consistent with the past practices of the designated entity, (b) similar in nature, style and magnitude to actions customarily taken in the ordinary course of the normal day-to-day operations of the designated entity and (c) do not require, and in the past have not received, specific authorization by the board of directors of the designated entity.

"Outside Date" means September 30, 2000, unless either (x) the parties hereto shall not have received by September 30, 2000 all regulatory approvals from all Governmental Authorities necessary to consummate the transactions contemplated by this Agreement, or (y) the Order shall not have been amended to permit the consummation of the transactions contemplated hereby, in which case the "Outside Date" means December 31, 2000.

"Permitted Encumbrances" means (a) liens for Taxes not yet due and payable, (b) Encumbrances that do not interfere with the use or enjoyment of the Consolidated Companies' assets or that are otherwise not material to the Consolidated Companies, (c) Encumbrances arising in the Ordinary Course of Business of the Consolidated Companies and (d) Encumbrances disclosed in Section 1 of the Corporations' Disclosure Schedule.

"Permitted Joint Program" means any agreement or business arrangement with respect to, any joint marketing arrangement, joint venture, strategic marketing alliance, cooperative or group purchasing organization, or any other contractual or partnering arrangement, with any Person that sells or distributes Competing Products, in which Parent Seller and its Subsidiaries (a) sell or distribute supplies and products that are not Competing Products (other than any Competing Products that are sold or distributed by the Seller Units pursuant to clause (a) of the definition of "Competing Business" in this Section 1.1), and (b) do not own or hold an ownership or equity interest exceeding twenty percent (20%) of the aggregate ownership or equity interests in such arrangement, venture, alliance or organization.

"Person" means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust or joint venture, or a governmental agency or political subdivision thereof.

"Post-Closing Period" means each taxable period with respect to the Consolidated Companies that begins after the Closing Date and the portion, beginning after the Closing Date, of each Straddle Period.

"Pre-Closing Period" means each taxable period with respect to the Consolidated Companies that ends on or before the Closing Date and the portion, ending on the Closing Date, of each Straddle Period.

"Proprietary Rights" means all of the (a) patents, inventions, discoveries, trademarks, service marks, industrial designs, trade names, trade styles, trade dress, service names, logos, slogans, brand names, brand marks, computer software, copyrights and the like (whether registered with federal, state or other governments of any country or unregistered) and applications, registrations, permits and licenses relating thereto and any reissues, continuations, continuations-in-part and extensions thereof; (b) computer software and licenses related thereto; and (c) processes, methods, information, data, plans, art works, blueprints, specifications, designs, drawings, engineering reports, test reports, material standards, processing standards, performance standards, know-how, formulas, trade secrets, concepts, applications, procedures, marketing and technical data, customer and vendor lists and other confidential information used in or otherwise necessary for the conduct of the Businesses of the Consolidated Companies.

"Regulated Substances" means pollutants, contaminants, hazardous or toxic substances, compounds or related materials or chemicals, hazardous materials, hazardous waste, flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products (including, but not limited to, waste petroleum and petroleum products) as regulated under any applicable Environmental Law.

"Revenue Limit" means, for each of the following Seller Units, the following percentage of total dollar sales of such Seller Units: (a) the Besse Medical Products division of ASD Specialty Healthcare, Inc. ("BMP") - 10%; (b) ASD Specialty Healthcare, Inc. excluding BMP ("ASD") - 5%; (c) PharMerica, Inc. ("PM") - 5%; (d) Bergen Brunswig Drug Company ("BBDC") - 0.4%; and (e) each New Unit, 10%.

"RSI Common Stock" means the common stock, no par value, of RSI.

"SEC" means the United States Securities and Exchange Commission.

"Seller Unit" shall mean each of (a) BMP, (b) ASD (excluding BMP) and ASD's direct and indirect wholly owned Subsidiaries, (c) PM and its direct and indirect wholly owned Subsidiaries, (d) BBDC and its direct and indirect wholly owned Subsidiaries and (e) any entity (including any Small Entity) established or more than 20% of which is acquired by the Parent Seller or its Subsidiaries after the Closing Date (any such entity referred to in this clause (e), a "New Unit").

"Selling Efforts" means efforts directed at individual health care providers seeking to encourage such providers to participate in a Permitted Joint Program; provided, however, that for purposes of this Agreement, the Parent Seller and its Subsidiaries or any other participant in a Permitted Joint Program shall not be deemed to have engaged in Selling Efforts directed to a particular customer by virtue of any selling efforts directed toward a purchasing group or other affiliated group of which such customer is a member.

"Small Entity" means an entity and its Subsidiaries, if any, which collectively, during the four calendar quarters prior to the calendar quarter in which the Parent Seller or its Subsidiaries first takes an action of the type referred to in clauses (b) or (c) of the definition of "Competing Business" with respect to such entity and its Subsidiaries, did not have sales of Competing Products in excess of (x) ten percent (10%) of such entity's total sales and (y) \$10,000,000, measured in terms of gross Competing Products sales dollars.

"Straddle Period" means any taxable period with respect to the Consolidated Companies beginning on or before the Closing Date and ending after the Closing Date.

"Subsidiaries" of any entity means, at any date, any Person (a) the accounts of which would be consolidated with those of the applicable entity in such entity's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date; or (b) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests or more than 50% of the profits or losses of which are, as of such date, owned, controlled or held by the applicable entity or one or more subsidiaries of such entity. The term "Subsidiaries" shall include, with respect to the Consolidated Companies, Pacific Criticare, Inc. ("PCI"), a California corporation.

"Tax" means any of the following, and "Taxes" means all of the following, imposed by or payable to any Governmental Authority: any income, gross receipts, license, payroll, employment, excise, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under section 59A of the Code), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, or value added tax, any alternative or add-on minimum tax, any estimated tax, and any levy, impost, duty, assessment, or withholding, in each case including any interest, penalty, or addition thereto, whether disputed or not.

"Territory" means the United States and its territories.

"Transfer Assets" means the Transfer Real Property, the Transfer Lease, the Transfer Data Center Assets and the Transfer Marks.

"Transfer Data Center Assets" means the Data Center assets described in Appendix 1.9A annexed hereto.

"Transfer Lease" means the real property lease listed in Appendix 1.7 annexed hereto.

"Transfer Marks" means the trademarks, service marks and copyright listed in Appendix 1.8 annexed hereto.

"Transfer Real Property" means the real property described in Appendix 1.2 annexed hereto.

"Transfer Real Property Deed" means a deed, from the Subsidiary Seller to BBMC, in the form and substance of the deed annexed hereto as Appendix 1.3.

"Transition Support Agreement" means a transition support agreement, between the Parent Seller and the Purchaser, in the form and substance of the transition support agreement annexed hereto as Appendix 1.4.

"UNITI System" means the software system described in Section 3.21 of the Corporations' Disclosure Schedule.

"UNITI System Assignment and Assumption Agreement" means an agreement, between BBMC and the Parent Seller in the form and substance of the assignment and assumption agreement annexed hereto as Appendix 1.6.

Section 1.2 *Terms Defined in Other Sections.* The following terms are defined elsewhere in this Agreement in the following Sections:

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Tax Returns	3.8.3
Tax Survival Period	9.1.4
Third Party Claim	9.3
Withdrawal Liability	3.16.1

Section 1.3 *Interpretation*. Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) words importing the masculine gender shall also include the feminine and neutral genders, and vice versa; (iii) words importing the singular shall also include the plural, and vice versa; and (iv) the word "including" means "including without limitation".

## ARTICLE II

### Purchase and Sale of Stock

Section 2.1 *Purchase and Sale of the RSI Common Stock and the BBMC Common Stock*. Upon the terms and subject to the conditions of this Agreement and on the basis of the representations, warranties and agreements contained herein, at the Closing, (i) the Parent Seller shall sell, assign, transfer, convey and deliver to the Purchaser an aggregate of one

hundred (100) shares of RSI Common Stock, constituting all of the issued and outstanding shares of RSI's capital stock, (ii) the Subsidiary Seller shall sell, assign, transfer, convey and deliver to the Purchaser an aggregate of one thousand (1,000) shares of BBMC Common Stock, constituting all of the issued and outstanding shares of BBMC's capital stock, and (iii) the Purchaser shall pay, and the Parent Purchaser shall cause the Purchaser to pay, the Preliminary Purchase Price to the Sellers and the Escrow Agent in the manner provided for herein.

*Section 2.2 Preliminary Purchase Price.* The purchase price payable by the Purchaser hereunder at the Closing in accordance with Section 2.3 shall consist of cash in an amount equal to (a) one hundred and eighty one million dollars (\$181,000,000) (the "Base Price") plus (b) the Estimated Differential if the Estimated Differential is a positive number minus (c) the Estimated Differential if the Estimated Differential is a negative number (such aggregate amount described in clauses (a), (b) and (c), the "Preliminary Purchase Price"). At least two Business Days prior to the Closing Date, the Parent Seller will provide the Purchasers with a written notice setting forth the Estimated Differential and detailing its calculation.

*Section 2.3 Deliveries at the Closing.* Upon the terms and subject to the conditions of this Agreement and on the basis of the representations, warranties and agreements contained herein, at the Closing:

2.3.1 the Parent Seller shall deliver to the Purchaser one or more stock certificates, duly endorsed for transfer, representing 100 shares of RSI Common Stock;

2.3.2 the Subsidiary Seller shall deliver to the Purchaser one or more stock certificates, duly endorsed for transfer, representing 1,000 shares of BBMC Common Stock;

2.3.3 the Parent Seller and the Purchasers shall execute and deliver the Transition Support Agreement and the Sellers and the Purchasers shall execute and deliver the Escrow Agreement;

2.3.4 the Purchaser shall pay, and the Parent Purchaser shall cause the Purchaser to pay, to the Sellers an amount equal to the Preliminary Purchase Price minus ten million dollars (\$10,000,000), such aggregate amount to be paid by wire transfer to an account or accounts specified in writing by the Parent Seller; and

2.3.5 the Purchaser shall pay, and the Parent Purchaser shall cause the Purchaser to pay, to the Escrow Agent ten million dollars (\$10,000,000) of the Preliminary Purchase Price by wire transfer to an account or accounts specified in writing by the Parent Seller after consultation with the Escrow Agent, it being understood that the cash deposited with the Escrow Agent pursuant to this Section 2.3.5 shall be held by the Escrow Agent, and ultimately disbursed by the Escrow Agent, in accordance with the terms and conditions of the Escrow Agreement and this Agreement.

*Section 2.4 Closing.* Subject to the rights of the parties to terminate this Agreement in accordance with Article VIII, the closing of the transactions contemplated hereby (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52<sup>nd</sup> Street, New York, New York 10019 at 10:00 A.M. on the fifth Business Day after the satisfaction or waiver of the conditions set forth in Article VII capable of being satisfied prior to the Closing, or at such other time and place as is mutually agreed by the Parent Purchaser and the Parent Seller. The time and date of the Closing are herein called the "Closing Date".

## Section 2.5 *Post-Closing Purchase Price Determination.*

2.5.1 *Definition.* The term "Final Purchase Price" means (a) the Base Price plus (b) the amount, if any, by which the Net Asset Value as of the Closing Date (as reflected in the Final Accountant's Report prepared pursuant to this Section 2.5) exceeds the March 31 Value minus (c) the amount, if any, by which the March 31 Value exceeds the Net Asset Value as of the Closing Date (as reflected in the Final Accountant's Report prepared pursuant to this Section 2.5).

### 2.5.2 *Adjustments in the Purchase Price.*

2.5.2.1 *Increased Consideration.* If the Final Purchase Price is greater than the Preliminary Purchase Price, then, as soon as possible after final determination of the Net Asset Value pursuant to this Section 2.5 and calculation of the amount by which the Final Purchase Price exceeds the Preliminary Purchase Price (such excess amount, the "Increased Consideration"), the Purchaser shall pay, and the Parent Purchaser shall cause the Purchaser to pay, to the Sellers, by wire transfer to an account or accounts specified in writing by the Parent Seller, an amount of cash equal to the Increased Consideration plus interest on the Increased Consideration from the Closing Date to the date of such payment at a per annum rate equal to the Borrowing Rate.

2.5.2.2 *Decreased Consideration.* If the Final Purchase Price is less than the Preliminary Purchase Price, then, as soon as possible after final determination of the Net Asset Value pursuant to this Section 2.5 and calculation of the amount by which the Preliminary Purchase Price exceeds the Final Purchase Price (such excess amount, the "Decreased Consideration"), the Sellers and the Escrow Agent shall refund the Decreased Consideration to the Purchaser as follows: the Sellers shall pay to the Purchaser, by wire transfer to an account or accounts specified in writing by the Purchaser, an amount of cash equal to ninety four and one half percent (94-1/2%) of the sum of (a) the Decreased Consideration and (b) interest on the Decreased Consideration from the Closing Date to the date of such refund at a per annum rate equal to the Borrowing Rate, and shall cause the Escrow Agent to pay (from the funds held in escrow pursuant to the Escrow Agreement) to the Purchaser, by wire transfer to an account or accounts specified in writing by the Purchaser, an amount of cash equal to five and one half percent (5-1/2%) of the sum of (c) the Decreased Consideration and (d) interest on the Decreased Consideration from the Closing Date to the date of such refund at a per annum rate equal to the Borrowing Rate; provided that the amount of such payment from the "Escrow Account" (as defined in the Escrow Agreement) shall not exceed five million dollars (\$5,000,000); provided further, that to the extent that the amount of such payment exceeds five million dollars (\$5,000,000) the Sellers shall pay such deficiency to the Purchasers by wire transfer.

### 2.5.3 *Accountants' Reports.*

2.5.3.1 *Proposed Statement and Initial Accountant's Report.* The Sellers shall prepare at their expense, and furnish to the Purchasers, a proposed statement of the Net Asset Value as of the Closing Date, which statement shall include a consolidated balance sheet of the Consolidated Companies prepared in accordance with GAAP (collectively, the "Proposed Statement"), subject to the adjustments set forth in Sections 2.5.4 and 2.5.5. The CPA shall audit the Proposed Statement and shall prepare a special accountant's report (the "Initial Accountant's Report") with respect to the Net Asset Value as of the Closing Date. The Initial Accountant's Report shall include a consolidated balance sheet of the Consolidated Companies as of the Closing Date prepared in accordance with GAAP, subject to the adjustments set forth

in Sections 2.5.4 and 2.5.5. As soon as practicable, but, in any event, not more than ninety (90) days after the CPA receives the Proposed Statement, the Purchasers shall cause the CPA to furnish the Initial Accountant's Report concurrently to the Sellers and the Purchasers, along with a schedule of any adjustments made by the CPA to the Proposed Statement, and shall cause the CPA to make its work papers with respect to the Initial Accountant's Report available to the Sellers no later than the time that the Initial Accountant's Report is so furnished. The Sellers shall cause the Corporations to conduct, and the CPA and the Purchasers shall be afforded the ability to participate in, a physical inventory as of the Closing Date.

*2.5.3.2 Time for Objections.* After the CPA shall have furnished the Initial Accountant's Report to the Sellers, if the Sellers object to the Initial Accountant's Report on the grounds that it has not been made in accordance with this Agreement, the Sellers may give written notice of their objection to the Purchasers within thirty (30) days after their receipt of the Initial Accountant's Report. If no such assertion is made within such thirty (30) day period, or if the Purchasers and the Sellers agree upon all matters in dispute within the fifteen (15) day period specified in Section 2.5.3.3, that Initial Accountant's Report, as adjusted to reflect any such agreements, shall be final and binding on all parties hereto for the purpose of determining the Net Asset Value as of the Closing Date and shall be referred to as the "Final Accountant's Report".

*2.5.3.3 Dispute Resolution.* The Purchasers and the Sellers will use reasonable efforts to resolve any matters in dispute (with respect to the calculation of the Net Asset Value as of the Closing Date) as rapidly as possible. If the Purchasers and the Sellers are unable to resolve all items in dispute (with respect to the calculation of the Net Asset Value as of the Closing Date) within fifteen (15) days after the Purchasers' receipt of the Sellers' written objection to the Initial Accountant's Report, then those items in dispute shall be submitted for resolution to the Independent Accountant. The Independent Accountant shall resolve such disputes by application of GAAP (subject to the adjustments set forth in Sections 2.5.4 and 2.5.5). The determination of the Independent Accountant with respect to those items in dispute, together with the determinations of the Purchasers and the Sellers with respect to those items not in dispute, shall become the "Final Accountant's Report" and shall be final and binding upon all parties hereto.

*2.5.3.4. Payment of Fees.* The Sellers shall pay the fees of their accountants, and the Purchasers shall pay the fees of the CPA, in connection with the preparation and review of the Initial Accountant's Report and the Final Accountant's Report. The fees and disbursements of the Independent Accountant employed pursuant to the provisions of Section 2.5.3.3 shall be borne one-half by the Purchasers and one-half by the Sellers.

*2.5.4 Asset Value.* The total assets of the Consolidated Companies shall be determined as of the Closing Date, and shall be determined in accordance with GAAP, except that in the event that an asset is transferred outside the ordinary course of business, between March 31, 2000 and the Closing Date, (a) from one of the Consolidated Companies to the Parent Seller or to a Subsidiary of the Parent Seller or (b) from the Parent Seller or a Subsidiary of the Parent Seller to one of the Consolidated Companies, such asset shall be included in calculating the Net Asset Value only if it was included in determining the March 31 Value.

*2.5.5 Liability Value.* The total liabilities of the Consolidated Companies shall be determined as of the Closing Date, and shall be determined in accordance with GAAP, except that:

2.5.5.1 the Consolidated Companies' liabilities for Taxes shall be stated without reference to any reserves for potential Tax liabilities, regardless of whether the Consolidated Companies have heretofore recorded any such reserves;

2.5.5.2 no reserves shall be established for any of the matters described in Section 9.2.1(iv); and

2.5.5.3 no severance liability shall be recognized with respect to employees of the Consolidated Companies whose employment is terminated prior to the Closing, provided that responsibility for severance for such employees is assumed by the Parent Seller or a Subsidiary of the Parent Seller other than the Consolidated Companies.

### **ARTICLE III**

#### **Representations and Warranties Regarding the Consolidated Companies**

The Corporations and the Sellers jointly and severally represent and warrant to the Purchasers as follows:

Section 3.1 *Organization and Standing; Business.* Each of the Consolidated Companies is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization with full corporate power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. As of the Closing, each of the Consolidated Companies will be duly qualified to do business and in good standing in each jurisdiction in which the nature of the business conducted by it or the property it owns, leases or operates requires it to so qualify, except where the failure to be so qualified or in good standing in any such jurisdiction would not reasonably be expected to result in a Material Adverse Change with respect to the Consolidated Companies. The Parent Seller has heretofore furnished to the Purchasers a complete and correct copy of the certificate of incorporation and by-laws of each of the Consolidated Companies, each as in effect on the date hereof. None of the Consolidated Companies is in default in any material respect in the performance, observance or fulfillment of any provision of their respective organizational documents. The Sellers have set forth in Section 3.1 of the disclosure schedule that they have delivered to the Purchasers as of the date hereof (the "Corporations' Disclosure Schedule") a brief description of each of the businesses in which the Consolidated Companies are engaged (the "Businesses").

Section 3.2 *Subsidiaries.* The Corporations do not own, directly or indirectly, any equity or other ownership interest in any corporation, partnership, joint venture, limited liability company or other entity or enterprise, except for the Subsidiaries and other entities set forth in Section 3.2 of the Corporations' Disclosure Schedule. Except as set forth in Section 3.2 of the Corporations' Disclosure Schedule, none of the Consolidated Companies is subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any of the Consolidated Companies that is not wholly owned, directly or indirectly, by one of the Corporations. Except as set forth in Section 3.2 of the Corporations' Disclosure Schedule, the Corporations own, directly or indirectly, each of the outstanding shares of capital stock (or other ownership interests having by their terms ordinary voting power to elect a majority of directors or others performing similar functions with respect to such Subsidiary) of each of the Subsidiaries and other entities identified in Section 3.2 of the Corporations' Disclosure Schedule. Except as set forth in Section 3.2 of the Corporations'

Disclosure Schedule, each of the outstanding shares of capital stock or other ownership interests of each of such Subsidiaries and such other entities is duly authorized, validly issued, fully paid and nonassessable, and, at the Closing, will be owned, directly or indirectly, by the Corporations free and clear of all Encumbrances. Other than as set forth in Section 3.2 of the Corporations' Disclosure Schedule, there are no outstanding subscriptions, options, warrants, puts, calls, agreements, understandings, claims or other commitments or rights of any type relating to the issuance, sale or transfer of any securities or other equity interests of any Subsidiary or other entity listed in Section 3.2 of the Corporations' Disclosure Schedule, nor are there outstanding any securities or other equity interests which are convertible into or exchangeable for any shares of capital stock or other equity interests of any such Subsidiary or other entity, and none of the Consolidated Companies has any obligation of any kind to issue any additional securities or grant any additional equity interests of any Subsidiary or other entity listed in Section 3.2 of the Corporations' Disclosure Schedule or to pay for or repurchase any securities or other equity interests of any such Subsidiary or other entity or any predecessor thereof. None of the Consolidated Companies is required to file any reports with the SEC.

*Section 3.3 Corporate Power and Authority.* Each of the Corporations has all requisite corporate power and authority to enter into and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by each Corporation have been duly authorized by all necessary corporate action on the part of such Corporation. This Agreement has been duly executed and delivered by each Corporation and constitutes the legal, valid and binding obligation of each Corporation enforceable against it in accordance with its terms. All Persons who executed this Agreement on behalf of the Corporations have been duly authorized to do so.

*Section 3.4 Capitalization of the Corporations.* BBMC's authorized capital stock consists solely of one thousand (1,000) shares of BBMC Common Stock, all of which shares are issued and outstanding. RSI's authorized capital stock consists solely of one thousand (1,000) shares of RSI Common Stock, one hundred (100) of which shares are issued and outstanding. Each outstanding share of the capital stock of each of the Corporations is duly authorized and validly issued, fully paid and nonassessable, and has not been issued in violation of any preemptive or similar rights. There are no outstanding subscriptions, options, warrants, puts, calls, agreements, understandings, claims or other commitments or rights of any type relating to the issuance, sale, repurchase or transfer by the Corporations of any securities of the Corporations, nor are there outstanding any securities that are convertible into or exchangeable for any shares of capital stock of the Corporations, and neither the Corporations nor any Subsidiary of the Corporations have any obligation of any kind to issue any additional securities or to pay for or repurchase any securities of the Corporations or any predecessor.

*Section 3.5 Conflicts; Consents and Approvals.* Except as set forth in Section 3.5 of the Corporations' Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will:

3.5.1 conflict with, or result in a breach of any provision of, the organizational documents of the Corporations;

3.5.2 violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event that, with the giving of notice, the passage of time or otherwise, would constitute a default) under, or entitle any party (with the giving of notice, the passage of time or otherwise) to terminate, accelerate, modify or call a default under, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) upon any of the properties

or assets of any of the Consolidated Companies under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, contract, undertaking, agreement, lease, arrangement, understanding or other instrument or obligation to which any of the Consolidated Companies is a party;

3.5.3 violate any order, writ, injunction, decree, statute, rule or regulation applicable to any of the Consolidated Companies or any of their respective properties or assets; or

3.5.4 require any action or consent or approval of, or review by, or registration or filing by the Corporations or any of their Affiliates with, any third party or any Governmental Authority, other than actions required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the United States Food, Drug and Cosmetics Act (the "FDA Act") or any state law comparable to the FDA Act;

except in the case of Sections 3.5.2, 3.5.3 and 3.5.4 for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change with respect to the Consolidated Companies or a material adverse effect on the ability of the parties hereto to consummate the transactions contemplated hereby.

**Section 3.6 *No Material Adverse Change; Other Changes.*** Except as disclosed in the Financial Statements or in Section 3.6 of the Corporations' Disclosure Schedule, (a) since September 30, 1999, the Consolidated Companies have operated their Businesses only in the Ordinary Course of Business, (b) since September 30, 1999, there has been no change in the business, operations, condition (financial or otherwise), properties, assets, liabilities or results of operations of the Consolidated Companies that could reasonably be expected to constitute a Material Adverse Change with respect to the Consolidated Companies or any event, occurrence or development that could reasonably be expected to have a material adverse effect on the ability of the Corporations or the Sellers to consummate the transactions contemplated hereby, (c) from October 1, 1999 through March 31, 2000, the Consolidated Companies did not engage in any material act outside the Ordinary Course of Business (such as, by way of example, a disposition of substantial assets outside the Ordinary Course of Business) which would cause the Consolidated Companies' consolidated financial statements for such period not to be comparable with the Consolidated Companies' consolidated financial statements for the period from October 1, 1998 through March 31, 1999, (d) there has not been any change in accounting methods, principles or practices by the Consolidated Companies except insofar as may have been required by a change in GAAP, or (e) since March 31, 2000, neither the Sellers nor the Consolidated Subsidiaries have engaged in any action which, if done after the date of this Agreement would violate Section 6.3 of this Agreement.

**Section 3.7 *Insurance.*** The Consolidated Companies are, and since their acquisition by the Parent Seller or its Affiliates have been, covered by insurance in scope and amount customary, adequate and suitable for their Businesses. Section 3.7 of the Corporations' Disclosure Schedule lists each insurance policy and contractual right to indemnification and contribution maintained by or on behalf of or providing coverage to any of the Consolidated Companies since the inception of their Businesses of which Sellers or the Consolidated Companies have any copy or records (the "Insurance Policies"). The Sellers have previously provided the Purchasers with access to all known primary general liability Insurance Policies. All Insurance Policies are operative and in effect, and all premiums due thereon have been paid. The Corporations have complied in all material respects with the terms and conditions of the Insurance Policies to the extent applicable to the Consolidated Companies. With respect to those aspects of the Insurance Policies applicable to the Consolidated Companies, no Seller or

Consolidated Company has received, (i) with respect to any open or pending claim, any refusal to provide coverage or any notice that a defense will be afforded with a reservation of rights that is not listed in Section 3.7 to the Corporations' Disclosure Schedule, or (ii) any notice of cancellation or any other indication that an insurance policy is no longer in operation and effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder. Each of the Consolidated Companies has given notice to the insurer of all claims that may be insured thereby known to the Legal Department responsible for claims or suits against any of the Consolidated Companies or the Risk Manager responsible for insurance coverage for any of the Consolidated Companies. Each of the Consolidated Companies is a "named insured" or an "insured" under the Insurance Policies. None of the Consolidated Companies or the Sellers has received any written notice, nor has the Parent Seller's risk manager received any oral notification, from any insurer that the consummation of the transactions in which the Parent Seller directly or indirectly acquired each of the Consolidated Companies provides a basis to bar coverage under a provision of an applicable Insurance Policy prohibiting the transfer or assignment of an interest in such Insurance Policy, and no claim made by Parent Seller on behalf of any of the Consolidated Companies has been rejected on such basis. The manner in which the Sellers acquired the Consolidated Companies did not affect, and nothing Parent Seller or the Consolidated Companies has done since such acquisition affected, their right to coverage under the Insurance Policies in a manner that would bar coverage under a provision of an applicable Insurance Policy that prohibits the transfer or assignment of an interest in such Insurance Policy.

Section 3.8 *Taxes*. Except as set forth in Section 3.8 of the Corporations' Disclosure Schedule:

3.8.1 The Consolidated Companies (i) have duly filed, or have received valid extensions for the filing of, all federal, state, local and foreign income, franchise, excise, real and personal property and other Tax Returns (including, but not limited to, those filed on a consolidated, combined or unitary basis) required to have been filed by the Consolidated Companies prior to the date hereof, all of which foregoing Tax Returns are true and correct in all material respects; (ii) have within the time and manner prescribed by applicable law paid in all material respects or, prior to the Closing Date, will pay in all material respects all Taxes, interest and penalties required to be paid in respect of the periods covered by such returns or reports or otherwise due to any federal, state, foreign, local or other taxing authority; (iii) have adequate reserves on their financial statements for any Taxes in excess of the amounts so paid; (iv) are not delinquent in the payment of any material Tax and have not requested or filed any document having the effect of causing any extension of time within which to file any returns in respect of any fiscal year which have not since been filed; and (v) have not received written notice of any material deficiencies for any Tax from any taxing authority, against any of the Consolidated Companies for which there are not adequate reserves. None of the Consolidated Companies is the subject of any currently ongoing Tax audit. As of the date of this Agreement, there are no pending requests for waivers of the time to assess any material Tax, other than those made in the Ordinary Course of Business and for which payment has been made or there are adequate reserves. With respect to any taxable period ended prior to December 31, 1994, all federal income Tax Returns including any of the Consolidated Companies have been audited by the Internal Revenue Service or are closed by the applicable statute of limitations. None of the Consolidated Companies has waived any statute of limitations in respect of any material Taxes or agreed to any extension of time with respect to a material Tax assessment or deficiency. There are no material liens with respect to Taxes upon any of the properties or assets, real or personal, tangible or intangible, of any of the Consolidated Companies (other than liens for Taxes not yet due). Since January 1, 1997, no claim has been made in writing by an authority in a jurisdiction where none of Consolidated

Companies file Tax Returns that any of the Consolidated Companies is or may be subject to taxation by that jurisdiction. None of the Consolidated Companies has filed an election under Section 341(f) of the Code to be treated as a consenting corporation. None of the Consolidated Companies has any material liability for any Taxes of any Person other than any of the Consolidated Companies under Treas. Reg. §1.1502-6 or any comparable provision of state, local or foreign law, as a transferee or successor, by contract, or otherwise.

3.8.2 The Consolidated Companies have, in all material respects, withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

3.8.3 "Tax Returns" or "Returns" means returns, reports and forms required to be filed with any Governmental Authority of the United States or any other jurisdiction responsible for the imposition or collection of Taxes.

Section 3.9 *Compliance with Law.* Except as set forth in Section 3.9 of the Corporations' Disclosure Schedule, each of the Consolidated Companies is in compliance in all material respects, and at all times since December 31, 1996 has been in compliance in all material respects, with all applicable law relating to the Consolidated Companies or the Businesses or the Consolidated Companies' properties, except where such non-compliance has been cured prior to the date hereof. Except as disclosed in Section 3.9 of the Corporations' Disclosure Schedule, no investigation or review by any Governmental Authority with respect to any of the Consolidated Companies is pending, or, to the knowledge of the Sellers and the Corporations, threatened, nor has any Governmental Authority indicated in writing, or, to the knowledge of the Sellers and the Corporations orally, an intention to conduct the same, other than those arising in the Ordinary Course of Business of the Consolidated Companies.

Section 3.10 *Intellectual Property.* The Consolidated Companies own or possess, free and clear of any Encumbrance other than a Permitted Encumbrance, adequate valid licenses or other valid rights to use all of their Proprietary Rights, and there has not been any material written or, to the knowledge of the Parent Seller, oral, assertion or claim against any of the Consolidated Companies challenging the validity or the use by any of the Consolidated Companies of any of the foregoing. Other than licenses generally available to the public at reasonable cost and licenses or rights to use set forth in Section 3.10 of the Corporations' Disclosure Schedule, no license or other valid right to use any of the Consolidated Companies' Proprietary Rights is necessary for the use of these Proprietary Rights in substantially the same manner as they are presently used by the Consolidated Companies in the conduct of the Businesses. Except as set forth in Section 3.10 of the Corporations' Disclosure Schedule or with respect to commercially and readily-available third party software, the Consolidated Companies have the right and license to use, copy, modify, create derivative works from and distribute all software programs and technical documentation therefor that are included in the Proprietary Rights. To the knowledge of the Sellers and the Corporations, the conduct of the Businesses as currently conducted by the Consolidated Companies does not conflict with or infringe upon any patent, patent right, license, trademark, trademark right, trade dress, trade name, trade name right, service mark, copyright or other intellectual property right of any third party. Except as set forth in Section 3.10 of the Corporations' Disclosure Schedule, to the knowledge of the Sellers and the Corporations, there are no infringements by any third party of any of the Proprietary Rights owned by or licensed by or to any of the Consolidated Companies and no Proprietary Rights of any of the Consolidated Companies are the subject of any pending administrative, judicial or other legal proceeding or other Action.

Section 3.11. *Title to Properties; Condition and Sufficiency of Assets.* Other than the Transfer Assets, the Consolidated Companies own (with good and marketable title in the case of all real property not subject to lease) free and clear of any Encumbrances or lease all real property, plants, machinery and equipment necessary and sufficient for the conduct of the Businesses of the Consolidated Companies as presently conducted, subject to Permitted Encumbrances and the Encumbrances described in Section 3.11 of the Corporations' Disclosure Schedule. The buildings, plants, structures, and equipment of the Consolidated Companies are in good operating condition and repair, reasonable wear and tear excepted, and are adequate for the uses to which they are being put; and none of such buildings, plants, structures, or equipment is in need of material maintenance or repairs, except for ordinary routine maintenance and repairs.

Section 3.12 *Environmental Matters.* Except for matters disclosed in Schedule 3.12 of the Corporations' Disclosure Schedule, (a) the operations and activities of the Consolidated Companies are in compliance in all material respects with all applicable Environmental Laws and Environmental Permits and all past noncompliance of any of the Consolidated Companies with any Environmental Laws or Environmental Permits that has been resolved with any Governmental Authority has been resolved without any material pending, ongoing or future obligation, cost or liability; (b) the Consolidated Companies and the operations of the Consolidated Companies are not subject to any material existing, pending, or, to the knowledge of the Sellers and the Corporations, threatened Action or inquiry by or before any court or Governmental Authority under any Environmental Law; (c) there has been no release of any Regulated Substance into the environment by any of the Consolidated Companies or in connection with their present and past operations, other than releases which comply in all material respects with all Environmental Laws; (d) to the knowledge of the Sellers and the Corporations, there has been no exposure of any Person or property to any Regulated Substance in connection with the activities and operations of the Consolidated Companies, except for exposure that complies in all material respects with all Environmental Laws and Environmental Permits; and (e) the Parent Seller has made available to the Purchasers all internal and external environmental audits and reports (in each case, relevant to the Consolidated Companies) prepared since January 1, 1994 in the possession of any of the Consolidated Companies. The term "Environmental Laws" means all federal, state, local or foreign laws relating to pollution or protection of human health and safety or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of Regulated Substances into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Regulated Substances, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder, as in effect on the date hereof. "Environmental Permit" means any permit, approval, identification number, license or other authorization required under or issued pursuant to any applicable Environmental Law. None of the Consolidated Companies has been notified in writing by a Governmental Authority or any other Person that it may be, and, to the knowledge of the Sellers and the Corporations none of the Consolidated Companies is, a Potentially Responsible Party concerning sites listed on the National Priority List under CERCLA or any state equivalent. To the knowledge of the Sellers and the Corporations, there is no hazardous waste treatment, storage or disposal facility or underground storage tanks located on any property owned by any of the Consolidated Companies. None of the Consolidated Companies is engaged in product sterilization on any of its properties. None of the Consolidated Companies is subject to any ongoing remedial activities or proceedings related to any of their present or former properties.

Section 3.13 *Litigation*. Except as set forth in Section 3.13 of the Corporations' Disclosure Schedule or in any report heretofore filed by the Seller with the SEC, there is no material Action pending, and, to the knowledge of the Sellers and the Corporations, no material Action or Claim threatened, against any of the Consolidated Companies or any executive officer or director of the Consolidated Companies in their capacity as such. Except as set forth in Section 3.13 of the Corporations' Disclosure Schedule, none of the Consolidated Companies is subject to any material outstanding order, writ, injunction or decree. Except as set forth in Section 3.13 of the Corporations' Disclosure Schedule, since September 30, 1999, none of the Consolidated Companies has been subject to any outstanding order, writ, injunction or decree relating to the Consolidated Companies' methods of doing business or the Consolidated Companies' relationships with past, existing or future users or purchasers of any goods or services of any of the Consolidated Companies.

Section 3.14 *Brokerage and Finder's Fees; Expenses*. Except as set forth on Section 3.14 of the Corporations' Disclosure Schedule, neither the Sellers nor any of the Consolidated Companies nor any stockholder, director, officer or employee thereof, has incurred, or will incur on behalf of any of the Consolidated Companies, any brokerage, finder's or similar fee in connection with the transactions contemplated by this Agreement.

### Section 3.15 *Financial Statements*.

3.15.1 Section 3.15 of the Corporations' Disclosure Schedule contains the following annual and interim consolidated financial statements of the Consolidated Companies: the consolidated balance sheets of the Consolidated Companies as of September 30, 1999 and 1998 and the related consolidated statements of income and changes in stockholders' equity of the Consolidated Companies for the years ended September 30, 1999, 1998 and 1997 and the consolidated balance sheet of the Consolidated Companies as of March 31, 2000 (the "Interim Balance Sheet") and the related consolidated statement of income of the Consolidated Companies for the six month periods ended March 31, 2000 and 1999. The financial statements delivered pursuant to this Section 3.15.1 are hereinafter referred to as the "Financial Statements". The Financial Statements fairly present the consolidated financial condition and changes in stockholders' equity of the Consolidated Companies and the consolidated results of the Consolidated Companies' operations as at the dates and for the periods to which they apply, as the case may be, and such statements have been prepared in conformity with GAAP (except as may otherwise be indicated in the notes thereto and except that certain footnotes required by GAAP with respect to interim periods have been omitted). The Financial Statements for all interim periods include all adjustments (subject only to normal year-end adjustments) necessary for a fair presentation of the Consolidated Companies' consolidated financial position and results of operations.

3.15.2 No unrecorded funds or assets of the Consolidated Companies have been established for any purpose; no accumulation or use of the funds of the Consolidated Companies has been made without being properly accounted for in the respective books and records of the Consolidated Companies; all payments by or on behalf of the Consolidated Companies have been duly and properly recorded and accounted for in the Consolidated Companies' books and records; no false or artificial entry has been made in the books and records of the Consolidated Companies for any reason; no payment has been made by or on behalf of the Consolidated Companies with the understanding that any part of such payment is to be used for any purpose other than that described in the documents supporting such payment; and the Consolidated Companies have not made, directly or indirectly, any illegal contributions to any political party or candidate, either domestic or foreign, or any contribution,

gift, bribe, rebate, payoff, influence payment or kickback, whether in cash, property or services, to any Person, to secure business or to pay for business secured.

3.15.3 No operations have been discontinued by the Consolidated Companies within the last five (5) years, other than Sentry Medical Systems, Inc., an Illinois corporation ("SMSI"), the operations of which were discontinued in January, 2000.

3.15.4 The accounts and notes receivable of the Consolidated Companies as of the date of this Agreement and any accounts and notes receivable arising between the date hereof and Closing Date are or will be valid and legally binding, represent or will represent sales actually made (net of all applicable credits and/or rebates), and arose or will arise in the Ordinary Course of Business of the Consolidated Companies.

3.15.5 (i) The inventories of the Consolidated Companies as of March 31, 2000 as reflected in the Interim Balance Sheet consist of a quality and quantity usable and merchantable in the Ordinary Course of Business, except for obsolete or damaged items or items of below-standard quality, which in all material respects have been written off or written down to their fair market value on or before March 31, 2000; (ii) all inventories as of such date not written off have been priced at the lower of cost or market on a LIFO basis; and (iii) neither the Sellers nor the Corporations knows or, as of the Closing, will know of any situations material to the Consolidated Companies in which the Consolidated Companies had, as of March 31, 2000 or will have as of the Closing Date, quantities of any type of inventory that were not reasonable under the then current circumstances of the Company.

#### Section 3.16 *Employee Benefit Plans.*

3.16.1 For purposes of this Section 3.16, the following terms have the definitions given below:

"Controlled Group Liability" means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, (iii) Sections 412 and 4971 of the Code, (iv) the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code and the portability and nondiscrimination requirements of Section 701 et seq. of ERISA and Section 9801 et seq. of the Code, and (v) corresponding or similar provisions of foreign laws or regulations, in each case, other than pursuant to the Plans.

"ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is or was at the relevant time a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(13) of ERISA.

"Plans" means all written and material unwritten employee benefit plans, programs, policies, practices and other arrangements providing benefits to any employee or former employee or beneficiary or dependent thereof, and whether covering one Person or more than one Person, sponsored or maintained by any of the Consolidated Companies or to which any of the Consolidated Companies contributes or is obligated to contribute, or under which any current or former employee of any of the Consolidated Companies is entitled to any compensation benefits (whether or not contingent) as a result of service to any of the Consolidated Companies, including all "employee welfare benefit plans" within the meaning of Section 3(1) of ERISA and all "employee pension benefit plans" within the meaning of Section 3(2).

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as those terms are defined in Part I of Subtitle E of Title IV of ERISA.

3.16.2 Section 3.16(b) of the Corporations' Disclosure Schedule includes a complete list of all Plans. With respect to each Plan, the Parent Seller has provided to the Purchasers a true, correct and complete copy of the following (where applicable): (i) each writing constituting a part of such Plan, including all plan documents, trust agreements, and insurance contracts and other funding vehicles; (ii) the two most recent Annual Reports (Forms 5500 Series) and accompanying schedules, if any; (iii) the current summary plan description, if any; (iv) the most recent annual financial report, if any; (v) the most recent determination letter from the Internal Revenue Service, and (vi) the most recent actuarial report. Except as specifically provided in the foregoing documents provided to the Purchasers, there are no amendments to any Plan that have been adopted or approved nor has any of the Consolidated Companies undertaken to make any such amendments or to adopt or approve any new Plan.

3.16.3 Except as set forth in Section 3.16(c) of the Corporations' Disclosure Schedule, the Internal Revenue Service has issued a favorable determination letter with respect to each Plan that is intended to be a "qualified plan" within the meaning of Section 401(a) of the Code (a "Qualified Plan"), and, to the knowledge of the Sellers and the Corporations, no circumstance exists nor has any event occurred that could adversely affect the qualified status of any Qualified Plan or the related trust in a manner that cannot be cured without any material cost or liability to the Consolidated Companies.

3.16.4 All contributions required to be made by any of the Consolidated Companies to any Plan by any applicable laws or by any plan document or other contractual undertaking, and all premiums due from or payable by the Consolidated Companies 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" with the meaning of Section 419 of the Code or (ii) is unfunded.

3.16.5 Each of the Consolidated Companies has complied, and is 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, any requirement for the posting of security with respect to a Plan or the imposition of any lien on the assets of any of the Consolidated Companies under ERISA or the Code.

3.16.6 Except as set forth in Section 3.16(f) of the Corporations' Disclosure Schedule, no Plan is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA (a "Multiemployer Plan") or a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA (a "Multiple Employer Plan"), nor have any of the Consolidated Companies or any of their respective ERISA Affiliates, at any time within six years before the date hereof, contributed to or been obligated to contribute to any Multiemployer Plan or Multiple Employer Plan. With respect to each Multiemployer Plan described in Section 3.16(f) of the Corporations' Disclosure Schedule: (i) neither any of the Consolidated Companies nor any of their ERISA Affiliates has incurred any Withdrawal Liability that has not been satisfied in full; (ii) if any of the Consolidated Companies

or any of their respective ERISA Affiliates were to experience a withdrawal or partial withdrawal from such plan, no Withdrawal Liability would be incurred; and (iii) neither any of the Consolidated Companies nor any of their ERISA Affiliates has received any notification, nor has any reason to believe, that any such plan is in reorganization, is insolvent, has been terminated, or would be in reorganization, be insolvent, or be terminated. Except for Multiemployer Plans described in Section 3.16(f) of the Corporations' Disclosure Schedule, no qualified plan maintained by any of the Consolidated Companies or any of their respective ERISA Affiliates is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code.

3.16.7 The Consolidated Companies have not incurred any Controlled Group Liability. No circumstance exists, and no event has occurred, that would result in, any material Controlled Group Liability that would be a liability of any of the Consolidated Companies following the Closing. Without limiting the generality of the foregoing, neither any of the Consolidated Companies nor any of their respective ERISA Affiliates has engaged in any transaction described in Section 4069 or Section 4203 of ERISA.

3.16.8 Except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Title I of ERISA and except as set forth in Section 3.16(h) of the Corporations' Disclosure Schedule, none of the Consolidated Companies has any material liability for life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof.

3.16.9 Except as disclosed in Section 3.16(i) of the Corporations' Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in, cause the accelerated vesting, funding or delivery of, or increase the amount or value of, any payment or benefit to any employee, officer, director or consultant of any of the Consolidated Companies. Without limiting the generality of the foregoing, except as set forth in Section 3.16(i) of the Corporations' Disclosure Schedule, no amount paid or payable by any of the Consolidated Companies in connection with the transactions contemplated by this Agreement either solely as a result thereof or as a result of such transactions in conjunction with any other events will be an "excess parachute payment" within the meaning of Section 280G of the Code.

3.16.10 Except as disclosed in Section 3.16(j) of the Corporations' Disclosure Schedule, there are no pending or, to the knowledge of the Sellers or any of their respective ERISA Affiliates, threatened claims (other than claims for benefits in the Ordinary Course of Business), lawsuits or arbitrations which have been asserted or instituted against the Plans, any fiduciaries thereof with respect to their duties to the Plans or the assets of any of the trusts under any of the Plans, which could reasonably be expected to result in any material liability of the Consolidated Companies to the Pension Benefit Guaranty Corporation, the Department of Treasury, the Department of Labor, or any Multiemployer Plan or any other party.

3.16.11 Section 3.16(k) of the Corporations' Disclosure Schedule sets forth a list of each employment, severance, consulting or similar agreement under which any of the Consolidated Companies is or could become obligated to provide compensation or benefits in excess of \$200,000 in any one calendar year (each, an "Employment Agreement"), and the Parent Seller has provided to the Purchasers a copy of each Employment Agreement.

Section 3.17 *Contracts*. Section 3.17 of the Corporations' Disclosure Schedule lists all contracts, agreements, guarantees, leases and executory commitments that exist as of the date hereof other than Plans (each a "Contract") to which any of the Consolidated Companies is a party and that fall within any of the following categories: (a) material customer and supplier

agreements, (b) agreements with product vendors and suppliers that obligate such vendors and suppliers to market or support particular products, (c) Contracts not entered into in the Ordinary Course of Business other than those that are not material to the Businesses and are insignificant in amount of consideration payable by the Consolidated Companies thereunder, (d) joint venture and partnership agreements, (e) Contracts containing covenants purporting to limit the freedom of any of the Consolidated Companies to compete in any line of business in any geographic area or to hire any individual or group of individuals, (f) Contracts that, by their terms, after the Closing Date would have the effect of limiting the freedom of the Purchasers or their Affiliates to compete in any line of business in any geographic area or to hire any individual or group of individuals or to acquire any Persons or assets, (g) Contracts relating to any outstanding commitment for capital expenditures in excess of one million dollars (\$1,000,000), (h) indentures, mortgages, promissory notes, loan agreements or guarantees of borrowed money in excess of \$1,000,000, letters of credit or other agreements or instruments of any of the Consolidated Companies or commitments for the borrowing or the lending of amounts in excess of one million dollars (\$1,000,000) by any of the Consolidated Companies or providing for the creation of any charge, security interest, encumbrance or lien upon any of the assets of any of the Consolidated Companies with an aggregate value in excess of one hundred thousand dollars (\$100,000) and (i) Contracts providing for "earn-outs" or other contingent payments by any of the Consolidated Companies involving more than one hundred thousand dollars (\$100,000) over the term of the Contract. Except with respect to Contracts identified as unsigned in Section 3.17 of the Corporations' Disclosure Schedule, the significant terms of each of the Contracts are in full force and effect and are valid and enforceable. None of the Consolidated Companies is party to a supply or marketing agreement related to any products that applies to Persons who, on the date of this Agreement or at or after the Closing Date are, Affiliates of the Consolidated Companies and is not terminable within ninety (90) days by such Consolidated Company.

Section 3.18 *Labor Matters*. Except as set forth in Section 3.18 of the Corporations' Disclosure Schedule, none of the Consolidated Companies has any consulting agreements providing for compensation of any individual in excess of one hundred and fifty thousand dollars (\$150,000) annually, or any collective bargaining agreements with any Persons employed by any of the Consolidated Companies or any Persons otherwise performing services primarily for any of the Consolidated Companies. There is no labor strike, dispute or stoppage pending or, to the knowledge of the Sellers and the Corporations, threatened against any of the Consolidated Companies, and none of the Consolidated Companies has experienced any labor strike, dispute or stoppage since September 30, 1998. To the knowledge of the Sellers and the Corporations, no event has occurred or circumstance exists that could reasonably be expected to provide the basis for any work stoppage or other material labor dispute.

Section 3.19 *Undisclosed Liabilities*. Except (i) as and to the extent disclosed or reserved against on the Interim Balance Sheet, (ii) as incurred after the date of the Interim Balance Sheet in the Ordinary Course of Business and not prohibited by this Agreement, (iii) as shall be reflected in the Final Accountant's Report, (iv) as arise on or after the Closing Date pursuant to agreements in effect as of the Closing Date and (v) as set forth in Section 3.19 of the Corporations' Disclosure Schedule, the Consolidated Companies do not have any liabilities or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, that, individually or in the aggregate, result or would result in a Material Adverse Change with respect to the Consolidated Companies. None of the Consolidated Companies has or will have any liability, whether known or unknown, accrued, contingent or otherwise, whether due or to become due, related to the Corporations' arrangement or understanding with DeRoyal Industries.

### Section 3.20 *Permits; Compliance.*

3.20.1 Each of the Consolidated Companies is in possession of all material franchises, grants, authorizations, licenses, permits, easements, variances, exemptions, consents, certificates, approvals and orders necessary to own, lease and operate its properties and to carry on its Business as it is now being conducted (collectively, the "Company Permits"), and there is no material Action pending, or, to the knowledge of the Sellers and the Corporations, material Action or Claim threatened regarding any of the Company Permits. None of the Consolidated Companies is in conflict in any material respect with, or in default in any material respect (or would be in default in any material respect with the giving of notice, the passage of time, or both) with, or in violation in any material respect of, any of the Company Permits.

3.20.2 To the knowledge of the Sellers and the Corporations, none of the Consolidated Companies or any of their officers (during the term of such Person's employment by any of the Consolidated Companies) has made any untrue statement of a material fact or fraudulent statement to any Governmental Authority or failed to disclose a material fact required to be disclosed to any Governmental Authority in connection with or relating to any Company Permits or other permitting matters.

Section 3.21 *UNITI System.* The description of the UNITI System in Section 3.21 of the Corporations' Disclosure Schedule is accurate in all material respects. The components of the UNITI System described in Section 3.21 of the Corporations' Disclosure Schedule that are not set forth in Appendix 1.5 annexed hereto have been implemented in the operation of the Businesses by the Consolidated Companies.

Section 3.22 *Entire Business.* The Consolidated Companies constitute all of the Persons engaged in the business of selling or distributing medical, surgical or laboratory supplies and products by the Parent Seller or any of its Affiliates within the Territory, except to the extent disclosed in Section 3.22 of the Corporations' Disclosure Schedule.

Section 3.23 *March 31 Value.* Section 3.23 of the Corporations' Disclosure Schedule sets forth the manner in which the March 31 Value was calculated. The assets included in the March 31 Value reflect substantially all of the business assets (other than leased assets) that were used by the Consolidated Companies in the Businesses on March 31, 2000, other than a facility in Mobile, Alabama and the Transfer UNITI Items. The March 31 Value does not reflect any reserves of the types described in Sections 2.5.5.1 and 2.5.5.2. The March 31 Value does not reflect any liability for severance obligations that have been assumed by the Parent Seller or a Subsidiary of the Parent Seller other than the Consolidated Companies.

## ARTICLE IV

### **Representations and Warranties Regarding the Sellers**

The Sellers represent and warrant to the Purchaser as follows:

Section 4.1 *Organization and Qualification of the Sellers.* Each of the Sellers is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is incorporated, with full power and authority, corporate and other, to own or lease its property and assets and to carry on its business as presently owned, leased and conducted.

Section 4.2 *Corporate Power and Authority*. Each of the Sellers has all requisite corporate power and authority to enter into and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by each of the Sellers have been duly authorized by all necessary corporate action on the part of such Seller. This Agreement has been duly executed and delivered by each Seller and constitutes the legal, valid and binding obligation of each of the Sellers enforceable against each of the Sellers in accordance with its terms. All Persons who executed this Agreement on behalf of the Sellers have been duly authorized to do so.

Section 4.3 *Conflicts; Consents and Approvals*. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will:

4.3.1 conflict with, or result in a breach of any provision of, the certificate of incorporation or by-laws of the Sellers;

4.3.2 violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with the giving of notice, the passage of time or otherwise, would constitute a default) under, or entitle any party (with the giving of notice, the passage of time or otherwise) to terminate, accelerate, modify or call a default under, or result in the creation of any Encumbrance upon any of the properties or assets of the Sellers under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, contract, undertaking, agreement, lease, arrangement or understanding or other instrument or obligation to which either of the Sellers is a party;

4.3.3 violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Sellers or any of their properties or assets; or

4.3.4 require any action or consent or approval of, or review by, or registration or filing by the Sellers or any of its affiliates with, any third party or any Governmental Authority, other than (i) actions required by the HSR Act, the FDA Act or any state law comparable to the FDA Act and (ii) consents or approvals of any third party or Governmental Authority set forth in Section 3.5 of the Corporations' Disclosure Schedule;

except as contemplated by Section 7.1.5 with respect to the Order and except in the case of Sections 4.3.2, 4.3.3 and 4.3.4 for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change with respect to the Sellers and the Consolidated Companies or a material adverse effect on the ability of the parties hereto to consummate the transactions contemplated hereby.

Section 4.4 *Ownership of Shares*. The Parent Seller owns all of the outstanding shares of RSI Common Stock beneficially and of record. The Subsidiary Seller owns all of the outstanding shares of BBMC Common Stock beneficially and of record. At the Closing, the Parent Seller will own all of the outstanding shares of RSI Common Stock and the Subsidiary Seller will own all of the outstanding shares of BBMC Common Stock, in each case free and clear of any Encumbrances. There are no voting trust arrangements, shareholder agreements or other agreements (a) granting any option, warrant or right of first refusal with respect to the RSI Common Stock or the BBMC Common Stock to any Person, (b) restricting the right of the Parent Seller to sell the RSI Common Stock to the Purchaser or the right of the Subsidiary Seller to sell the BBMC Common Stock to the Purchaser, or (c) restricting any other right of the Parent Seller with respect to the RSI Common Stock or any other right of the Subsidiary Seller

with respect to the BBMC Common Stock. Except as set forth in Section 3.5 of the Corporations' Disclosure Schedule (with respect to consents to be sought prior to the Closing Date), the Parent Seller has the sole, absolute and unrestricted right, power and capacity to sell, assign and transfer all of the outstanding shares of RSI Common Stock to the Purchaser free and clear of any Encumbrances and the Subsidiary Seller has the sole, absolute and unrestricted right, power and capacity to sell, assign and transfer all of the outstanding shares of BBMC Common Stock to the Purchaser free and clear of any Encumbrances (subject to approval by its sole stockholder, the Parent Seller, which approval shall be obtained at or before Closing). Upon delivery to the Purchaser of the certificates representing the outstanding shares of RSI Common Stock and BBMC Common Stock at the Closing in exchange for the consideration to be delivered by the Purchaser at the Closing, the Purchaser will acquire good, valid and marketable title to such shares, free and clear of any Encumbrances of any kind (except for restrictions created by the Purchaser and restrictions imposed generally by applicable securities laws).

Section 4.5 *Brokers*. With the exception of Credit Suisse First Boston Corp., no Person is or will be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee from the Sellers in connection with this Agreement or any of the transactions contemplated hereby. The fees and expenses of Credit Suisse First Boston Corp. are the sole responsibility of, and shall be paid by, the Sellers.

## **ARTICLE V**

### **Representations and Warranties Regarding the Purchasers**

The Purchasers represent and warrant to the Sellers and the Corporations as follows:

Section 5.1 *Organization and Standing*. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware with full corporate power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. The Parent Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio with full corporate power and authority to own, lease, use and operate its properties and to conduct its business as and where now owned, leased, used, operated and conducted. Each of the Purchasers is duly qualified to do business and in good standing in each jurisdiction in which the nature of the business conducted by it or the property it owns, leases or operates requires it to so qualify, except where the failure to be so qualified or in good standing in such jurisdiction would not reasonably be expected to result in a Material Adverse Change with respect to the Purchasers and their Subsidiaries.

Section 5.2 *Corporate Power and Authority*. Each of the Purchasers has all requisite corporate power and authority to enter into and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by each of the Purchasers have been duly authorized by all necessary corporate action on the part of each of the Purchasers. This Agreement has been duly executed and delivered by each of the Purchasers and constitutes the legal, valid and binding obligation of each of the Purchasers enforceable against it in accordance with its terms. All Persons who executed this Agreement on behalf of each of the Purchasers have been duly authorized to do so.

Section 5.3 *Conflicts; Consents and Approvals*. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will:

5.3.1 conflict with, or result in a breach of any provision of, each Purchaser's certificate of incorporation, by-laws, code of regulations or other organizational documents;

5.3.2 violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event that, with the giving of notice, the passage of time or otherwise, would constitute a default) under, or entitle any party (with the giving of notice, the passage of time or otherwise) to terminate, accelerate, modify or call a default under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of either of the Purchasers or their respective Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, contract, undertaking, agreement, lease or other instrument or obligation to which either of the Purchasers or any of their Subsidiaries is a party;

5.3.3 violate any order, writ, injunction, decree, statute, rule or regulation applicable to either of the Purchasers or any of their respective Subsidiaries or any of their respective properties or assets; or

5.3.4 require any action or consent or approval of, or review by, or registration or filing by either of the Purchasers or any of its Affiliates with, any third party or any Governmental Authority, other than actions required by the HSR Act;

except as contemplated by Section 7.1.5 with respect to the Order and except in the case of Sections 5.3.2, 5.3.3 and 5.3.4 for any of the foregoing that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change with respect to the Purchasers and their Subsidiaries or a material adverse effect on the ability of either of the Purchasers to consummate the transactions contemplated hereby.

Section 5.4 *No Material Adverse Change; Other Changes.* Except as disclosed in any report filed by the Parent Purchaser with the SEC prior to the date of this Agreement, since March 31, 2000, there has been no change in the assets, liabilities, results of operations or financial condition of the Purchasers or their Subsidiaries which would have a material adverse effect on the ability of the Purchasers or the Sellers to consummate the transactions contemplated hereby.

Section 5.5 *Brokers.* No Person is or will be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee from the Purchasers in connection with this Agreement or any of the transactions contemplated hereby.

## **ARTICLE VI**

### **Covenants and Agreements**

#### *Section 6.1 Access and Information.*

6.1.1 Prior to the Closing, the Purchasers shall be entitled to make or cause to be made such investigation of the Consolidated Companies, including environmental testing, including the testing of soil, water and air and other samples, and the financial and legal condition thereof, as each of the Purchasers deems necessary or advisable, and the Corporations and the Sellers shall cooperate with any such investigation; *provided, however*, in the case of any such environmental testing on properties leased to any of the Consolidated Companies or their Affiliates, such testing shall be conducted, if at all, subject to the terms of

the applicable lease. In furtherance of the foregoing, but not in limitation thereof, the Sellers and the Corporations shall (a) permit the Purchasers and their agents and representatives or cause them to be permitted to have full and complete access to the premises, books and records of the Consolidated Companies upon reasonable notice during regular business hours, (b) furnish or cause to be furnished to the Purchasers such financial and operating data, projections, forecasts, business plans, strategic plans and other data relating to the Consolidated Companies as the Purchasers shall request from time to time and (c) cause their accountants (subject to the execution of such documents as shall be reasonably requested by such accountants) to furnish to the Purchasers and the Purchasers' accountants access to all work papers relating to the Consolidated Companies for any of the periods covered by any financial statements delivered to the Purchasers pursuant to this Agreement. Prior to the Closing, the Purchasers shall not (and shall cause their Subsidiaries not to) use any information obtained pursuant to this Section 6.1 for any purpose unrelated to the transactions described in this Agreement, except to the extent required by law. Except with respect to publicly available documents, in the event that this Agreement is terminated, the Purchasers will deliver to the Parent Seller all documents obtained by the Purchasers from the Consolidated Companies or the Sellers in confidence and any copies thereof in the possession of the Purchasers or their agents and representatives or, at the option of the Purchasers, the Purchasers shall cause all of such documents and all of such copies to be destroyed and the Purchasers shall certify the destruction thereof to the Corporations and the Sellers.

6.1.2 No investigation by either party of the other heretofore or hereafter made shall modify or otherwise affect (a) any representations and warranties of the Corporations or the Sellers on the one hand, or of the Purchasers on the other hand, made pursuant to this Agreement, which representations and warranties shall survive any such investigation to the extent provided herein, or (b) the conditions to the obligations of the Purchasers or the Sellers to consummate the transactions contemplated hereby.

Section 6.2 *Affirmative Covenants*. Prior to the Closing, except as otherwise expressly provided herein, each of the Corporations shall (and the Corporations shall cause each of their Subsidiaries to):

6.2.1 conduct its business only in the Ordinary Course of Business;

6.2.2 keep in full force and effect its corporate existence and all material rights, franchises, Proprietary Rights, goodwill and rights to indemnification or contribution relating or obtaining to the Businesses;

6.2.3 use all commercially reasonable efforts to retain its employees and preserve its present relationships with customers, suppliers, contractors, distributors and employees, and continue to compensate its employees consistent with past practices;

6.2.4 maintain its Proprietary Rights so as not to materially and adversely affect the validity or enforcement thereof; maintain its other assets in customary repair, order and condition and maintain insurance reasonably comparable to that in effect on the date of this Agreement; and in the event of any material casualty, loss or damage to any of its assets, repair or replace such assets with assets of comparable quality;

6.2.5 maintain its books, accounts and records in accordance with GAAP; and

6.2.6 maintain in effect all of the Insurance Policies.

Section 6.3 *Negative Covenants*. Prior to the Closing, without the prior written consent of the Purchaser or as otherwise expressly provided herein, each of the Corporations will not, the Corporations will cause each of their Subsidiaries not to, and each of the Sellers will not:

6.3.1 take any action or omit to take any action that would result in any of the Consolidated Companies': (a) incurring any trade accounts payable outside of the Ordinary Course of Business or making any commitment to purchase quantities of any item of inventory in excess of quantities normally purchased by any of the Consolidated Companies in the Ordinary Course of Business; (b) increasing any of the Consolidated Companies' indebtedness for borrowed money except in the Ordinary Course of Business; (c) guaranteeing the obligations of any Person other than Consolidated Companies that are wholly owned, directly or indirectly, by the Corporations; (d) merging or consolidating with, purchasing substantially all of the assets of, or otherwise acquiring any business or any proprietorship, firm, association, limited liability company, corporation or other business organization; (e) increasing or decreasing the rate of compensation of or paying any unusual compensation to any officer, employee or consultant of any of the Consolidated Companies (other than regularly scheduled increases in base salary and annual bonuses consistent with prior practice and reasonable stay-pay arrangements that either (x) will not be a liability of the Consolidated Companies or the Purchasers after the Closing or (y) are consented to in writing by the Parent Purchaser); (f) entering into or materially amending any collective bargaining agreement; (g) declaring or paying any dividend or making any distribution with respect to, or purchasing or redeeming, shares of the capital stock of the Corporations; (h) selling, transferring, leasing, pledging, mortgaging, encumbering or disposing of any assets otherwise than in the Ordinary Course of Business of the Consolidated Companies; (i) issuing any shares of the capital stock of any kind of any of the Consolidated Companies or issuing or granting any subscriptions, options, rights, warrants, convertible securities or other agreements or commitments to issue, or contracts or any other agreements obligating any of the Consolidated Companies to issue, or to transfer from treasury, any shares of capital stock of any class or kind, or securities convertible into any such shares; (j) amending, adopting or entering into any written Plan or written Employment Agreement; (k) making any change in the certificate of incorporation or by-laws of the Consolidated Companies; (l) modifying, releasing, amending, terminating, supplementing or otherwise changing any of the material Contracts of the Consolidated Companies without the consent of the Purchasers, which consent shall not be unreasonably withheld, conditioned or delayed; (m) take any action that would render any of the representations and warranties of the Sellers and the Corporations contained herein false or incorrect in any material respect; (n) except with respect to the submission of valid claims by the Parent Seller or any of its Subsidiaries, taking any action that is designed or intended to adversely affect in any material respect the rights to coverage of any Consolidated Company under any Insurance Policy after the Closing; or (o) agreeing to do any of the foregoing;

6.3.2 incur or create any Encumbrances on the RSI Common Stock, the BBMC Common Stock, or any of the Consolidated Companies properties or assets (other than Permitted Encumbrances on such properties or assets);

6.3.3 except as contemplated herein, take any action or omit to take any action that would prejudice the Purchaser's rights to consummate each of the transactions contemplated by this Agreement;

6.3.4 take or omit to be taken any action, or permit its Subsidiaries to take or to omit to take any action, that could reasonably be expected to result in a Material Adverse Change with respect to the Consolidated Companies; or

6.3.5 agree or commit to take any action precluded by this Section 6.3.

Section 6.4 *Negative Covenants*. Prior to the Closing, without the prior written consent of the Parent Seller or as otherwise expressly provided herein, the Purchasers will not and the Parent Purchaser will cause its Subsidiaries not to, take any action or omit to take any action (or agree to do the foregoing) which would prejudice the Sellers' rights to consummate each of the transactions contemplated by this Agreement

Section 6.5 *Closing Documents*. The Corporations and the Sellers shall, prior to or on the Closing Date, execute and deliver, or cause to be executed and delivered, to the Purchaser the documents or instruments described in Sections 7.1 and 7.2. The Purchasers shall, prior to or on the Closing Date, execute and deliver, or cause to be executed and delivered, to the Sellers, the documents or instruments described in Sections 7.1 and 7.3.

Section 6.6 *Non-Competition and Confidentiality Agreement*.

6.6.1 For a period of three (3) years after the Closing Date, the Sellers will not, and the Sellers will cause their Subsidiaries not to, (a) directly or indirectly, in the Territory, engage in a Competing Business or (b) use for their own benefit or divulge or convey to any third party any Confidential Information (as hereinafter defined) relating to any of the Consolidated Companies. For purposes of this Agreement, the Sellers and their Subsidiaries shall not be deemed to have violated clause (a) of this Section 6.6.1 in the event that (i) the Sellers or their Subsidiaries acquire the capital stock or a substantial portion of the assets of a Person whose revenues during its last fiscal year attributable to a Competing Business (A) are less than \$55,000,000, and (B) represent less than 30% of the aggregate revenues of such Person during its last fiscal year, (ii) the Sellers promptly offer to sell such portion (the "Offending Portion") of the Person that either constitutes the Competing Business or that precludes such acquisition from being excluded from the operation of this Section 6.6.1 by virtue of the definition of the term "Competing Business", to the Parent Purchaser on commercially reasonable terms at a price that is either agreed upon by the Sellers and the Parent Purchaser or is determined by a valuation firm mutually acceptable to the Sellers and the Parent Purchaser to represent the fair market value of the Offending Portion and (iv) if the Parent Purchaser does not, or is not permitted by law to, accept such offer, the Sellers use all reasonable commercial efforts to dispose of such Offending Portion promptly. For purposes of this Agreement, the Sellers shall not be deemed to have violated clause (b) of this Section 6.6.1 if any of the Sellers or their Subsidiaries receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, civil investigative demand or order issued by a Governmental Authority, and such Seller or Subsidiary, to the extent not inconsistent with such request: (a) notifies the Purchasers promptly of the existence, terms, and circumstances surrounding such request; (b) consults with the Purchasers on the advisability of taking legally available steps (at Purchasers' cost and expense) to resist or narrow such request; and (c) if disclosure of any Confidential Information is required to prevent such Seller or Subsidiary from being held in contempt or becoming subject to any other penalty, to furnish only such portion of the Confidential Information as it reasonably determines such Seller or Subsidiary is legally obligated to disclose and to exercise all commercially reasonable efforts (at Purchasers' cost and expense) to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Confidential Information. For purposes of this Agreement, "Confidential Information" consists of all information, knowledge or data relating to any of the Consolidated Companies including customer and supplier lists, formulae, know-how, processes, trade secrets, consultant contracts, pricing information, marketing plans, product development plans, business acquisition plans and all other information relating to the operation of the Consolidated Companies not in the public domain or otherwise publicly available which

are or were treated as confidential by the Consolidated Companies. Information which enters the public domain or is publicly available loses its confidential status hereunder so long as neither the Sellers nor their Subsidiaries, directly or indirectly cause such information to enter the public domain.

6.6.2 The Sellers acknowledge that the restrictions contained in Section 6.6.1 are reasonable and necessary to protect the legitimate interests of the Purchaser and that any breach by the Sellers of any provision of this Section 6.6 will result in irreparable injury to the Purchaser. The Sellers acknowledge that, in addition to all remedies available at law, the Purchaser shall be entitled to equitable relief, including injunctive relief, and an equitable accounting of all earnings, profits or other benefits arising from any such breach and shall be entitled to receive such other damages, direct or consequential, as may be appropriate.

6.6.3 The parties acknowledge and agree that in order to confirm compliance with the limitations under Section 6.6.1(a), it may be necessary to review competitively sensitive information relating to the Parent Seller and/or its Subsidiaries, and the parties further acknowledge and agree that the Purchasers shall not under any circumstances be given access to competitively sensitive information in connection with any matter pertaining to compliance with the provisions of Section 6.6.1(a), including any matter pertaining to any of the definitions herein applicable to such compliance. In order to prevent such access and to permit Purchasers to confirm such compliance, if the Purchasers shall reasonably dispute compliance by the Parent Seller or its Subsidiaries with any aspect of Section 6.6.1(a) and the Parent Seller shall reasonably determine that resolution of such dispute requires the analysis of competitively sensitive information, then the Purchasers shall retain an independent third party (an "Independent Entity"), which shall be given access only to such competitively sensitive information as such Independent Entity shall reasonably deem necessary to calculate or otherwise determine such compliance. For purposes of this Agreement, an "Independent Entity" shall be a third party mutually acceptable to the Parent Seller and the Parent Purchaser selected jointly by the Parent Seller and the Parent Purchaser to resolve the specific dispute that has arisen under Section 6.6.1(a), which third party need not be the Independent Accountant or an entity that has been called upon to resolve any other dispute that may have arisen under Section 6.6.1(a). The Independent Entity shall review such information as it shall deem relevant to the applicable dispute, determine compliance, and issue a report (a "Compliance Report") to both the Parent Purchaser and the Parent Seller stating only (a) its conclusion of whether or not the Parent Seller and its Subsidiaries complied with the relevant provisions of this Agreement and (b) in summary form, stating the relevant limitations and the actual results compared to such limitations. The Compliance Report shall be final and binding upon the parties hereto with respect to the calculations made thereunder and shall be subject to judicial review solely with respect to the interpretation of the terms of this Agreement and not with respect to the calculations required by such terms. The fees and disbursements of such Independent Entity shall be shared equally by the Parent Purchaser and the Parent Seller. Prior to being given access to any competitively sensitive information, the Independent Entity shall be required to execute a confidentiality agreement in form and substance reasonably satisfactory to the Parent Seller. The Purchasers shall not commence an action to challenge or enforce the provisions of Section 6.6.1(a) later than the third anniversary of the Closing Date, and in any such action, the Purchasers shall not be permitted to discover, inspect or examine or have introduced into evidence, any competitively sensitive information pertaining to the Parent Seller or its Subsidiaries other than the Compliance Report.

Section 6.7 *Reasonable Efforts; Further Assurances.* Subject to the terms and conditions herein provided, each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary,

proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. The Corporations, the Sellers and the Purchasers will use all reasonable efforts to obtain consents of all Governmental Authorities and third parties necessary to the consummation of the transactions contemplated by this Agreement. In the event that at any time after Closing any further action is necessary to carry out the purposes of this Agreement or to obtain any licenses required, necessary or advisable in connection with the operation of any of the Businesses, the Sellers shall, upon Purchasers' reasonable request and at Purchasers' expense, take such commercially reasonable steps as the Purchasers shall request.

#### Section 6.8 *Certain Covenants.*

6.8.1 Each of the Purchasers and each of the Sellers shall (a) make or cause to be made the filings required of such party or any of its subsidiaries or Affiliates under the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and in any event within ten (10) business days after the date of this Agreement, (b) comply at the earliest practicable date with any request under the HSR Act for additional information, documents, or other materials received by such party or any of its Subsidiaries from the Federal Trade Commission or the Department of Justice or any other Governmental Authority in respect of such filings or such transactions, and (c) cooperate with the other party in connection with any such filing (including, with respect to the party making a filing, providing copies of all such documents to the non-filing party and its advisors prior to filing and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any such agency or other Governmental Authority under any Antitrust Laws (as hereinafter defined) with respect to any such filing or any such transaction. Each party shall use all reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable law in connection with the transactions contemplated by this Agreement. Each party shall promptly inform the other party of any communication with, and any proposed understanding, undertaking, or agreement with, any Governmental Authority regarding any such filings or any such transaction. No party shall independently participate in any formal meeting with any Governmental Authority in respect of any such filings, investigation, or other inquiry without giving the other party prior notice of the meeting and, to the extent permitted by such Governmental Authority, the opportunity to attend and/or participate. The parties hereto will consult and cooperate with one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the HSR Act or other Antitrust Laws. The Sellers and the Purchasers may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 6.8 as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient unless express permission is obtained in advance from the source of the materials (the Sellers or the Purchasers as the case may be) or its legal counsel.

6.8.2 Each of the Purchasers and the Sellers shall use all reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, "Antitrust Laws"). In

connection therewith, if any administrative or judicial Action is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Antitrust Law, each of the Purchasers and each of the Sellers shall cooperate and use all reasonable efforts vigorously to contest and resist any such action or proceeding, including any Action, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, or restricts consummation of the transactions contemplated by this Agreement, including by vigorously pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless by mutual agreement the Purchasers and the Sellers decide that litigation is not in their respective best interests. Notwithstanding the foregoing or any other provision of this Agreement, nothing in this Section 6.8 shall limit a party's right to terminate this Agreement pursuant to Section 8.1, so long as such party has up to then complied in all material respects with its obligations under this Section 6.8. Each of the Purchasers and each of the Sellers shall use all reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement.

6.8.3 Notwithstanding anything to the contrary in this Agreement, neither the Purchasers nor the Sellers shall be required to hold separate (including by trust or otherwise) or divest any of their respective businesses or assets, *provided, however*, that unless the Purchasers and the Sellers otherwise agree, if required to avoid an HSR Authority instituting an action challenging the transactions under this Agreement under the Antitrust Laws and seeking to enjoin or prohibit the consummation of any of the transactions contemplated by this Agreement, the Purchasers shall agree to hold separate (including by trust or otherwise) or divest any of the Businesses or assets of the Consolidated Companies, or take or agree to take any action or agree to any limitation with regard to the Businesses or assets of the Consolidated Companies required to avoid an HSR Authority's instituting an action challenging the transactions under this Agreement under the Antitrust Laws and seeking to enjoin or prohibit the consummation of any of the transactions contemplated hereby unless such action would be materially adverse to the Purchasers (judging materiality in terms of the size of the Consolidated Companies and not in terms of the Purchasers and their Subsidiaries) or would reasonably be expected to substantially impair the overall benefits expected, as of the date hereof, to be realized from consummation of the transactions contemplated hereby. Notwithstanding any other provision of this Section 6.8, no party shall be required to (a) waive any of the conditions to the Closing set forth in Article VII as they apply to such party, or (b) divest any of their respective businesses or assets if the divestitures would be required to be consummated prior to the Closing.

Section 6.9 *Notification by the Parties*. Each party hereto shall promptly inform the other party hereto in writing if, prior to the consummation of the Closing, any of the representations and warranties made by such party in this Agreement cease to be accurate and complete in all material respects (except for any representation and warranty that is qualified hereunder as to materiality or as to a Material Adverse Change, as to which such notification shall be given if the Sellers or the Corporations obtain knowledge that such representation and warranty is inaccurate in any respect).

#### Section 6.10 *Employees and Employee Benefits*.

6.10.1 From and after the Closing Date, the Purchasers shall treat all service by Consolidated Company Employees (as defined below) with the Sellers, the Consolidated Companies, any of the Parent Seller's other Subsidiaries and their respective predecessors

prior to the Closing Date for purposes of vesting and eligibility for benefits as service with Purchasers (except to the extent such treatment would result in duplicative accrual on or after the Closing Date of benefits for the same period of service), and, with respect to any medical or dental benefit plan in which Consolidated Company Employees participate after the Closing Date, the Purchasers shall waive or cause to be waived any pre-existing condition exclusions (provided, however, that no such waiver shall apply to a pre-existing condition of any Consolidated Company Employee who was, as of the Closing Date, excluded from participation in a benefit plan of the Parent Seller or its Subsidiaries by virtue of such pre-existing condition), and shall provide that any covered expenses incurred on or before the Closing Date by a Consolidated Company Employee or a Consolidated Company Employee's covered dependent shall be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Closing Date to the same extent as such expenses are taken into account for the benefit of similarly situated employees of the Purchasers and subsidiaries of the Purchasers. In addition, the Purchasers shall provide, or cause to be provided, to Consolidated Company Employees whose employment is terminated on or before the first anniversary of the Closing Date ("Severed Employees") severance pay continuation that is not less favorable than the pay continuation that would have been provided in the same circumstances under the Sellers' severance policy as set forth in the Sellers' HR Policy and Procedure Manual dated January 1999, (Policy Number 203), as provided to the Purchasers before the date hereof ("Sellers' Severance Policy"). The Purchasers shall also pay a portion of the Severed Employees' cost of "COBRA" continuation coverage under Code Section 4980B equal to the portion of the cost of such coverage provided by the Purchasers with respect to similarly situated active employees for the longer of three months or the period of severance pay continuation; provided, however, that Purchasers shall not be obligated to pay the portion of the cost of such coverage provided by the Purchasers with respect to similarly situated active employees for more than six months.

6.10.2 The term "Consolidated Company Employee" shall mean an individual who is an employee of a Consolidated Company who is actively at work (or not actively at work due to the taking of vacation, sick days, personal days or similar short-term absence) of any Consolidated Company (other than any employee referred to in Section 6.10.3 hereof). Sellers and the Consolidated Companies shall take all actions necessary and appropriate so that, before the Closing Date, (i) each individual who is an employee of any of the Consolidated Companies who does not qualify as a Consolidated Company Employee as of the Closing Date is transferred to the employ of the Sellers or one of their affiliates other than the Sellers, and (ii) the Consolidated Companies have no employees who are not actively at work (or who are not actively at work due to the taking of vacation, sick days, personal days or similar short-term absence) and no liabilities to provide compensation or benefits to any individuals other than persons who are actively at work (or who are not actively at work due to the taking of vacation, sick days, personal days or similar short-term absence) of any Consolidated Company. Sellers shall provide to Purchasers, no later than five business days following the Closing Date, a schedule ("Appendix 6.10.2") setting forth the name of each individual described in clause (i) of the second sentence of this Section 6.10.2 and his or her last position held, employment location, date of hire, date leave began and reason for absence. Without limiting the generality of the foregoing, it is expressly agreed that Sellers shall retain all obligations to provide compensation and disability, medical, retiree medical, "COBRA" continuation coverage under Code Section 4980B, pension, retirement and other employee benefits to any individual who does not qualify as a Consolidated Company Employee, including without limitation individuals who, as of the Closing Date, are on short-term or long-term disability leave or have retired. Notwithstanding the foregoing, the Purchasers shall hire, or cause the appropriate Consolidated Company to hire, any individual who is listed on Appendix 6.10.2 and who indicates an ability to return to active service within six months after the Closing Date; provided, however, that if the

reason for the individual's absence is due to his or her own medical condition, Purchasers may require such individual to furnish a physicians' note confirming such individual's ability to return to work. Any such individual listed on Appendix 6.10.2 who returns to service with the Purchasers or a Consolidated Company shall be considered a "Consolidated Company Employee" from the date he or she actually reports for service with Purchasers or such Consolidated Company. Purchasers shall assume all responsibility in connection with the re-employment of any such individual listed on Appendix 6.10.2 and for employment related decisions from and after the date such person becomes a Consolidated Company Employee. Purchasers shall promptly advise Sellers in writing of any such individual who becomes employed by Purchasers or a Consolidated Company within six months after the Closing Date. Sellers shall retain all employment related obligations and liabilities with respect to all such persons who do not become Consolidated Company Employees or who were improperly omitted from Appendix 6.10.2.

6.10.3 Before the Closing Date, the Parent Seller shall transfer to its employ, or to the employ of one of its Affiliates other than the Consolidated Companies, the individuals listed on Schedule 3 to the Transition Support Agreement. Such individuals shall in no event become or be considered Consolidated Company Employees.

6.10.4 The Purchasers shall not be treated as assuming any employment, termination and release, change of control, severance, supplemental retirement, deferred compensation or similar agreements or contracts to which any of the Consolidated Companies or Sellers or any other Affiliate of Sellers is a party, unless it expressly assumes such agreement or contract or such assumption is required by law or contract. None of the Consolidated Companies shall be treated as assuming any employment, termination and release, change of control, severance, supplemental retirement, deferred compensation or similar agreements or contracts to which Sellers or any other Affiliate of Sellers is a party, unless it expressly assumes such agreement or contract or such assumption is required by law or contract. Notwithstanding the foregoing, none of the Consolidated Companies shall be treated as assuming the Confidential Termination Agreement and Release among Sellers, the Consolidated Companies and the employees listed on Appendix 3.16(h), which liabilities shall remain the sole responsibility of Sellers.

6.10.5 The following provisions of the Section 6.10.5 apply with respect to those employees of the Consolidated Companies listed on Appendix 6.10.5 ("CIC Employees") who are contingently entitled to pay and/or benefits under certain change in control agreements identified on such Appendix (each a "CIC Agreement").

i. If a CIC Employee continues to be employed by the Consolidated Companies, or is employed by any Purchaser, immediately following the Closing Date, and the CIC Employee shall not have waived in writing his or her rights under the applicable CIC Agreement, then the Consolidated Companies and Purchasers shall assume, and be solely liable for, any payments and benefits under such CIC Employee's respective CIC Agreement other than Excluded Benefits (as defined below). "Excluded Benefits" means all liabilities for payments and benefits to the CIC Employee for (i) retiree welfare benefits provided under any benefit plan of the Seller or its Affiliates (including without limitation any benefit pursuant to the "Rule of 80" under Seller's Medical Expense Benefits Plan), (ii) benefits under the Bergen Brunswig Corporation Supplemental Executive Retirement Plan, and (iii) any "completion bonus" referred to in the CIC Agreement.

ii. If a CIC Employee is not employed by the Consolidated Companies, or by any Purchaser, immediately following the Closing Date, then: (i) Seller shall

remain solely liable for any amounts and benefits which may become payable to such CIC Employee pursuant to such CIC Employee's respective CIC Agreement (as well as for any Excluded Benefits to which the CIC Employee is entitled); and (ii) if, before the expiration of the applicable salary continuation period set forth in a CIC Employee's CIC Agreement, any of the Purchasers or any Consolidated Company, or any Affiliate of any of them, hire or otherwise retain, directly or indirectly, such CIC Employee, Purchasers shall promptly reimburse Seller for any amounts paid by Seller to such CIC Employee pursuant to his or her CIC Agreement, other than Excluded Benefits.

6.10.6 Consolidated Company Employees who, as of the later of the Closing Date or December 31, 2000, have satisfied the years of age and service to qualify for the "Rule of 80" benefits under Sellers' retiree welfare benefits program shall be treated, upon their termination of employment with the Consolidated Companies, as having retired from Sellers, and Sellers shall provide such Consolidated Company Employees with retiree welfare benefits in accordance with the terms as then in effect for similarly situated individuals who retire from employment with Sellers after having satisfied the "Rule of 80." The foregoing obligation of Sellers shall in no event be construed to limit Sellers' right to amend, terminate, curtail or otherwise modify or discontinue the "Rule of 80" retiree welfare benefits program to the extent Sellers have such right prior to Closing.

6.10.7 The Sellers shall take all steps necessary so that Consolidated Company Employees shall be permitted to receive a distribution of their vested benefits under the Pre-Tax Investment Retirement Account Plus Employee Contributions Plan (the "PIRA PLUS") in connection with the consummation of the transactions contemplated hereby.

6.10.8 The Sellers and Purchasers agree to share equally the costs of stay bonus payments consistent with Appendix 6.10.8 hereof.

Section 6.11 *No Solicitation.* The Parent Seller agrees that, during the term of this Agreement, it shall not, and shall not authorize or permit any of its Subsidiaries or any of its or its Subsidiaries' directors, officers, employees, agents or representatives, directly or indirectly, to solicit, initiate, encourage or knowingly facilitate, or furnish or disclose non-public information in furtherance of, any inquiries or the making of any proposal with respect to any recapitalization, merger, consolidation or other business combination which involves, but is limited to, the Consolidated Companies, or acquisition of the capital stock or the assets of the Consolidated Companies, taken as a whole, in a single transaction or a series of related transactions, or any combination of the foregoing (a "Competing Transaction"), or negotiate, explore or otherwise engage in discussions with any Person (other than the Purchasers, their Subsidiaries or their or their Subsidiaries' directors, officers, employees, agents and representatives) with respect to any Competing Transaction or enter into any agreement, arrangement or understanding requiring it to abandon, terminate or fail to consummate transactions contemplated by this Agreement. The Sellers' compliance with their obligations under Sections 6.10.2 and 6.10.4 shall not be considered to violate the provisions of this Section 6.11.

#### Section 6.12 *Tax Matters.*

6.12.1 Any Tax sharing agreement between either the Parent Seller and the Subsidiary Seller (or any of their respective Subsidiaries or Affiliates, other than the Consolidated Companies) on the one hand and any of the Consolidated Companies on the other hand shall be terminated as of the Closing Date and will have no further effect for any taxable year (whether the current year, a future year or a past year).

6.12.2 The affiliated, combined or unitary group of corporations of which the Sellers (or any of their Affiliates) are members (the "Seller Affiliated Group") shall include the income, if any, of each Consolidated Company that is a member of the Seller Affiliated Group (each such Consolidated Company, a "Member Company") (including any deferred income recognized pursuant to Treas. Reg. §1.1502-13 or Treas. Reg. §1.1502-14 and any income attributable to any excess loss account pursuant to Treas. Reg. §1.1502-19) on the Seller Affiliated Group's consolidated federal income (and, where applicable, state and local income or franchise) Tax Returns for all periods through the Closing Date and shall pay any income (or franchise) Taxes with respect to such income. The Member Companies shall furnish Tax information to the common parent of the Seller Affiliated Group (the "Seller Common Parent") for inclusion in such Tax Returns in accordance with the Member Companies' past custom and practice. For purposes of this Section 6.12 and Article IX, the income of the Member Companies will be apportioned between the period ending on the Closing Date and the period following the Closing Date by closing the books of the Member Companies as of the end of the Closing Date.

6.12.3 At the Seller Common Parent's request, the Purchasers will cause any of the Member Companies to make and/or join with the Seller Common Parent in making any Tax election after the Closing Date, provided that such election applies solely to a taxable period ending on or prior to the Closing Date and that the making of such election does not have an adverse impact on the Purchasers, any of their Subsidiaries or Affiliates or any of the Consolidated Companies (such adverse impact to be determined after taking into account all indemnification rights of the Purchasers, their Subsidiaries and Affiliates and the Consolidated Companies pursuant to Article IX).

6.12.4 The Sellers shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Consolidated Companies for all taxable periods ending on or prior to the Closing Date (including any Tax Returns with respect to periods for which a consolidated, unitary or combined Tax Return of the Seller Affiliated Group will include the operations of any of the Consolidated Companies). All such Tax Returns shall be prepared in a manner consistent with the Sellers' and the Consolidated Companies' past practices. The Sellers shall provide the Purchasers a copy of any such Tax Returns (or, in the case of any consolidated, combined or unitary Tax Returns, pro forma separate Returns of the Consolidated Companies) reasonably promptly after such Tax Returns are filed (or, in the case of Tax Returns filed prior to the date hereof, reasonably promptly after the request of the Purchasers). In the event any such Tax Return is audited or otherwise contested by any Governmental Authority (each such audit or contest, a "Tax Claim"), then the party hereto first receiving notice of such Tax Claim promptly shall provide written notice thereof to the other party or parties hereto, and such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of the relevant portion of any correspondence received from the Governmental Authority. The Sellers (or, the Seller Common Parent, as the case may be) shall have the right to control, at their own expense, the conduct of any audit or examination by, or contest or litigation against, any Governmental Authority (a "Tax Proceeding") with respect to any taxable period of the Consolidated Companies ending on or prior to the Closing Date; *provided, however*, that (i) the Sellers shall provide the Purchaser with a timely and reasonably detailed account of each stage of such Tax Proceeding; (ii) the Sellers shall consult with the Purchasers before taking any significant action in connection with such Tax Proceeding, (iii) the Sellers shall consult with the Purchasers and offer the Purchasers an opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Proceeding; (iv) the Sellers shall defend such Tax Proceeding diligently and in good faith as if they were the only party in interest in connection with such Tax Proceeding, and (v) the Sellers shall not settle, compromise or

abandon any such Tax Proceeding without obtaining the prior written consent, which consent shall not be unreasonably withheld, of the Purchasers; provided further, however, that clauses (i) through (v) above shall apply only to the extent that such Tax Proceeding could have an adverse impact on the Purchasers, any of their Subsidiaries or Affiliates or any of the Consolidated Companies (such adverse impact to be determined after taking into account all indemnification rights of the Purchasers, their Subsidiaries and Affiliates and the Consolidated Companies pursuant to Article IX). If, in connection with any Tax Proceeding, the Purchasers reasonably withhold consent pursuant to clause (v) above, then the Sellers and the Purchasers jointly shall engage an Independent Accountant to determine, with respect to any proposed settlement, compromise or abandonment of such Tax Proceeding, the course of action for such Tax Proceeding. For the avoidance of doubt, except to the extent permitted by the above provisions of this Section 6.12, the Purchasers shall not enter into any settlement or compromise of a Tax Proceeding or make any Tax election of or with respect to any of the Consolidated Companies to the extent that such settlement, compromise or election by its terms is made with respect to, and is binding with respect to, a taxable period of the Consolidated Companies ending on or prior to the Closing Date.

6.12.5 The Purchasers shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Consolidated Companies for all Straddle Periods and Post-Closing Periods. Solely with respect to any Straddle Period Tax Returns of the Consolidated Companies, the Purchasers shall provide the Sellers a copy of each such Straddle Period Tax Return at least 45 days prior to the Due Date of any such Tax Return for the Sellers' review and comment. Within 15 days after receiving such Tax Return, the Sellers shall deliver to the Purchasers in writing any changes that the Sellers request to such Tax Return. If the Sellers deliver such a request, then the Purchasers and the Sellers shall undertake in good faith to resolve the issues raised in such request prior to the due date for filing such Return. If the Purchasers and the Sellers are unable to resolve any issue, then the Purchasers and the Sellers jointly shall engage an Independent Accountant to determine the correct treatment of the item or items in dispute. The Independent Accountant shall make its determination with respect to each disputed item prior to the Due Date for filing such Tax Return, and such determination shall be final and binding on the parties hereto. In the case of any Tax Return required to be filed by Purchasers under this Section 6.12.5, the Sellers shall pay to the Purchasers an amount equal to the portion of the Taxes of the Consolidated Companies in respect of such Return for which the Sellers are responsible pursuant to Section 9.2.1(iii) no later than the date that is three days prior to the Due Date for payment of such Taxes. For purposes of this Section 6.12 and Article IX, in the case of any Taxes that are imposed on a periodic basis and are payable for any Straddle Period, the portion of such Tax which relates to the Pre-Closing Period shall (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the Pre-Closing Period and the denominator of which is the number of days in the entire taxable period, and (ii) in the case of any Tax based upon or related to income or receipts be determined based upon a closing of the books of the Consolidated Companies as of the end of the Closing Date. Any credits relating to a Straddle Period shall be determined based upon a closing of the books of the Consolidated Companies as of the end of the Closing Date. In the event any Straddle Period Tax Return is audited or otherwise contested by any Governmental Authority, then the party hereto first receiving notice of such Tax Claim promptly shall provide written notice thereof to the other party or parties hereto, and such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of the relevant portion of any correspondence received from the Governmental Authority. The Purchasers shall have the right to control, at their own expense, the conduct of any Tax Proceeding with respect to any Straddle Period Tax Return or Post-Closing Period Tax Return of any of the Consolidated Companies; *provided*,

*however*, that in the case of any such Tax Proceeding with respect to any Straddle Period Tax Return (i) the Purchasers shall provide the Sellers with a timely and reasonably detailed account of each stage of such Tax Proceeding; (ii) the Purchasers shall consult with the Sellers before taking any significant action in connection with such Tax Proceeding, (iii) the Purchasers shall consult with the Sellers and offer the Sellers an opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Proceeding; (iv) the Purchasers shall defend such Tax Proceeding diligently and in good faith as if they were the only party in interest in connection with such Tax Proceeding and (v) the Purchasers shall not settle, compromise or abandon any such Tax Proceeding without obtaining the prior written consent, which consent shall not be unreasonably withheld, of the Sellers. If, in connection with any Tax Proceeding, the Sellers reasonably withhold consent pursuant to clause (v) above, then the Purchasers and the Sellers jointly shall engage an Independent Accountant to determine, with respect to any proposed settlement, compromise or abandonment of such Tax Proceeding, the course of action for such Tax Proceeding. The Purchasers shall have the right to prepare and file any consolidated, combined or unitary Tax Returns that include Purchasers or any of their Subsidiaries or Affiliates and control any Tax Proceeding relating to any such Tax Return and the Sellers shall not be entitled to review any such Tax Returns or participate in any such Tax Proceedings.

6.12.6 Any Tax refund received by the Purchasers or any of the Consolidated Companies, and any amounts credited against Tax to which the Purchasers or any of the Consolidated Companies become entitled, that relate to any Pre-Closing Period of any of the Consolidated Companies (whether arising from a claim for refund, a Tax Proceeding or otherwise) shall be for the account of the Sellers, except for those refunds and credits which are specifically identified as Tax assets in the consolidated balance sheet of the Consolidated Companies as of the Closing Date that is contained in the Final Accountant's Report (such refunds and credits, "Balance Sheet Refunds and Credits"). The Purchasers shall pay over to the Sellers any such refund or the amount of any such credit within fifteen (15) days after the Purchasers' receipt or use thereof. Any Tax refund received by the Purchasers or the Sellers or any of the Consolidated Companies, and any amounts credited against Tax to which the Purchasers or the Sellers or any of the Consolidated Companies become entitled, that relate to the Post-Closing Period of any of the Consolidated Companies and any Balance Sheet Refunds and Credits (in each case, whether arising from a claim for refund, a Tax Proceeding or otherwise) shall be for the account of the Purchasers. The Sellers shall pay over to the Purchasers any such refund or the amount of any such credit within fifteen (15) days after the Sellers' receipt or use thereof.

6.12.7 The Purchasers, the Consolidated Companies and the Sellers shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 6.12 and any Tax Proceeding. Such cooperation shall include the retention and, upon a party's request, the provision of records and information reasonably relevant to any such Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Consolidated Companies and the Sellers agree (i) to retain all books and records with respect to Tax matters pertinent to the Consolidated Companies relating to any Tax period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the Purchasers or the Sellers, any extensions thereof) of the respective Tax periods, and to abide by all record retention agreements entered into with any Governmental Authority, and (ii) to give each other reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other so requests,

the Consolidated Companies or the Sellers, as the case may be, shall allow the other to take possession of such books and records. The Purchasers and the Sellers further agree, upon request, to use their reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated by this Agreement).

6.12.8 The parties agree to treat any payments after the Closing Date pursuant to Section 2.5 as an adjustment to the purchase price for Tax purposes, unless otherwise required pursuant to a "determination" within the meaning of Code Section 1313(a) (or analogous provisions of other Tax law).

Section 6.13 *UNITI System Assignment and Assumption Agreement.* Immediately prior to the commencement of the Closing, the Subsidiary Seller (or another Affiliate of the Parent Seller) and BBMC shall execute and deliver the UNITI System Assignment and Assumption Agreement. It is understood that as a result of the consummation of the UNITI System Assignment and Assumption Agreement, the Purchasers will not acquire any rights in and to the Transfer UNITI Items pursuant to this Agreement. The Sellers represent and warrant that the Consolidated Companies will suffer no material adverse consequences to their Businesses as a result of the transfer of the Transfer UNITI Items.

Section 6.14 *Transfers of Certain Assets.*

6.14.1 *Real Property Deed.* Immediately prior to the commencement of the Closing, the Subsidiary Seller shall execute and deliver the Transfer Real Property Deed to BBMC. It is understood and agreed that as a result of such transaction, the Subsidiary Seller will not retain any rights in and to the Transfer Real Property from and after the Closing.

6.14.2 *Lease.* Immediately prior to the commencement of the Closing, the Parent Seller shall execute and deliver the Assignment of Lease to BBMC. It is understood and agreed that as a result of such Assignment of Lease, the Parent Seller will not retain any rights in and to the Transfer Lease from and after the Closing.

6.14.3 *Transfer Marks.* Immediately prior to the commencement of the Closing, the Sellers shall execute and deliver the Assignment of Trademarks to BBMC and the Sellers and BBMC shall execute and deliver the Copyright Assignment and Assumption Agreement. It is understood and agreed that as a result of such transaction, the Sellers will not retain any rights in and to the Transfer Marks from and after the Closing.

6.14.4 *SMSI.* Immediately prior to the Closing, BBMC shall transfer all of the capital stock of SMSI to the Parent Seller or a Subsidiary of the Parent Seller other than a Consolidated Company.

6.14.5 *Data Center Assets.* Immediately prior to the commencement of the Closing, the Parent Seller or its Subsidiaries shall execute and deliver to BBMC, and BBMC shall execute and deliver, the Assignment of Data Center Assets and assumption of related liabilities. It is understood that as a result of such transaction, BBMC will acquire assets which have traditionally been furnished by the Parent Seller or its Subsidiaries to BBMC to equip and operate a data center, and operate a systems and accounts payable function.

Section 6.15 *Additional Employment Matters.*

6.15.1 For a period of one year after the Closing Date, the Parent Seller shall not, and the Parent Seller shall cause its Subsidiaries not to, hire any Consolidated Company Employees; *provided, however*, that nothing contained in this Section 6.15.1 shall prohibit the Parent Seller or its Subsidiaries from (a) hiring any Consolidated Company Employees whose employment with the Consolidated Companies is terminated by such entities without cause, (b) hiring any Consolidated Company Employees identified by the Purchaser (in responding in good faith to a written inquiry by the Parent Seller) as Consolidated Company Employees whose services are no longer desired by the Consolidated Companies, (c) hiring or soliciting Shawn Ward, so long as the Parent Seller and its Subsidiaries do not offer employment to Shawn Ward at any time prior to the sixtieth day after the Closing Date, provided that to the extent Shawn Ward is hired by any of the Sellers or their Subsidiaries, she will be permitted by the Sellers to continue to work for the Consolidated Companies for up to 12 months after the Closing Date to the extent necessary to assist the Consolidated Companies, provided further that in continuing work for the Consolidated Companies, she will not have to relocate her workplace to a place more than 15 miles from Orange, California, (d) hiring any CIC Employee (as defined in Section 6.10.5), other than Shawn Ward, who does not continue to be employed by a Consolidated Company, or is not employed by a Purchaser, immediately following the Closing Date, or (e) hiring any individual named in Schedule 3 to the Transition Support Agreement.

6.15.2 During the period commencing on the one year anniversary of the Closing Date and expiring one hundred and eighty (180) days thereafter, the Parent Seller shall not, and the Parent Seller shall cause its Subsidiaries not to, solicit any Consolidated Company Employees for an employment position with the Parent Seller or any of its Subsidiaries; *provided, however*, that nothing contained in this Section 6.15.2 shall prohibit the Parent Seller or its Subsidiaries from (a) soliciting any Consolidated Company Employees whose employment with the Consolidated Companies is terminated by such entities without cause, (b) soliciting any Consolidated Company Employees identified by the Purchaser (in responding in good faith to a written inquiry by the Parent Seller) as Consolidated Company Employees whose services are no longer desired by the Consolidated Companies, or (c) making a general solicitation that is not focused on any particular employee.

[Section 6.16 Intentionally omitted]

Section 6.17 *License Agreement*. The Parent Seller and the Purchaser shall execute and deliver the License Agreement at Closing.

Section 6.18 *Assignment of Insurance Proceeds*. The Sellers shall assign and transfer to the Corporations all Claims, causes of action, choses in action, rights of recovery and rights of set-off of any kind arising under any contract of insurance, indemnity or otherwise currently or previously in force or effect, or by operation of law, in favor of the Consolidated Companies, and pertaining to, or arising out of, the Businesses of the Consolidated Companies or the properties and assets of any of the Consolidated Companies.

Section 6.19. *Other Insurance Matters*.

6.19.1 In the event that either of the Purchasers or any Consolidated Company desires after the Closing to pursue coverage under any insurance policy under which Sellers potentially have rights (including any Insurance Policy) related to any of the Consolidated Companies, Sellers will exercise all reasonable efforts and shall take all steps reasonable necessary to assist in securing coverage under such policy. Sellers will not after the Closing improperly or unnecessarily exhaust, commute, release, novate or otherwise interfere with or

prejudice any right Purchasers or any Consolidated Companies may have to coverage under any policy of insurance.

6.19.2 In the event that the Sellers and their Affiliates desire after the Closing to pursue coverage under any insurance policy under which the Purchasers or any of the Consolidated Companies potentially have rights (including any Insurance Policy) related to any of the Sellers or their Affiliates, the Purchasers and the Consolidated Companies will exercise all reasonable efforts and shall take all steps reasonable necessary to assist in securing coverage under such policy. The Purchasers and the Consolidated Companies will not after the Closing improperly or unnecessarily exhaust, commute, release, novate or otherwise interfere with or prejudice any right Sellers or any of their Affiliates may have to coverage under any policy of insurance.

#### Section 6.20 *Access to Records after Closing.*

6.20.1 The Purchasers recognize that after the Closing they may have information documents, books, records, work papers and information (collectively, "Records") which relate to the Consolidated Companies with respect to the period or matters arising prior to the Closing, including Records pertaining to the Businesses and the Consolidated Companies' respective employees, assets and liabilities. The Purchasers further recognize that the Sellers' may need access to such Records after the Closing. The Purchasers shall provide the Sellers and their respective employees, representatives and agents access to, and the right to photocopy (at Sellers' expense), during normal business hours on reasonable advance notice, all such Records. The Purchasers shall use commercially reasonable efforts to maintain all such Records at least until the seventh anniversary of the Closing.

6.20.2 The Sellers recognize that after the Closing they may have Records which relate to the Consolidated Companies with respect to the period or matters prior to the Closing, and that the Purchasers may need access to such Records after the Closing. The Sellers shall provide the Purchasers and their respective employees, representatives and agents access to, and the right to photocopy (at Purchasers' expense), during normal business hours on reasonable advance notice, such Records. The Sellers shall use commercially reasonable efforts to maintain all such Records at least until the seventh anniversary of the Closing, or, at the Sellers' discretion, transfer such Records to the Purchasers.

6.20.3 Notwithstanding any provision herein to the contrary, Records pertaining to Taxes shall be governed solely by Section 6.12.

Section 6.21 *Change of Name of BBMC.* Notwithstanding anything in this Agreement to the contrary, immediately prior to the Closing, the Parent Seller shall take all actions necessary to change the name of BBMC.

Section 6.22 *Credit Facility Liens and Guaranties.* The Sellers shall use all commercially reasonable efforts to obtain at or before Closing (1) the release of (a) all liens on the assets of the Consolidated Companies, on the BBMC Common Stock and on the RSI Common Stock granted pursuant to the Credit Facility and (b) the guaranties granted by BBMC and RSI pursuant to the Credit Facility and (2) the delivery to the Sellers of the certificates representing all outstanding shares of BBMC Common Stock and RSI Common Stock. Promptly after the execution of this Agreement, the Sellers shall use all commercially reasonable efforts to obtain from The Chase Manhattan Bank, in its capacity as agent for the lenders under that certain Credit Agreement with Sellers dated as of April 30, 2000, a letter in form and substance reasonably satisfactory to the Parent Purchaser and the Parent Seller,

confirming that each of the liens, security interests, guarantee claims and other obligations created under the Credit Agreement and ancillary agreements thereto in favor of the agent and the lenders against the Consolidated Companies or the assets or stock of the Consolidated Companies shall be released upon the consummation of the transactions contemplated by this Agreement, provided that the applicable requirements of the Credit Agreement shall have been complied with.

## **ARTICLE VII**

### **Conditions to Closing**

Section 7.1 *Mutual Conditions.* The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to Closing of the following conditions:

7.1.1 No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order that is in effect or commenced any Action, that, in either case, would prohibit consummation of the transactions contemplated by this Agreement or would threaten the imposition of material damages upon consummation of such transactions.

7.1.2 Any waiting period required by the HSR Act, and any extensions thereof obtained by request or other action of the United States Federal Trade Commission (the "FTC") and/or the Antitrust Division of the United States Department of Justice (the "Antitrust Division"), shall have expired or been terminated by the FTC and the Antitrust Division.

7.1.3 No third party shall have instituted any suit or proceeding against any party hereto to restrain, enjoin or otherwise prevent the consummation of the transactions contemplated hereby, or to seek damages from or impose obligations upon any party hereto by reason of the transactions contemplated hereby, which, in such party's reasonable judgment, would involve expense or lapse of time that would be materially adverse to such party's interest.

7.1.4 The Escrow Agent shall have executed and delivered the Escrow Agreement.

7.1.5 The Order shall have been modified so as not to prohibit the purchase by the Purchasers of assets of the Parent Seller, or the Parent Purchaser and the Parent Seller shall have received confirmation, in form and substance satisfactory to each such party, that the Order will be interpreted in such a manner as not to prohibit the purchase by the Purchasers of assets of the Parent Seller.

7.1.6. The liens on the BBMC Common Stock, the RSI Common Stock and the assets of the Consolidated Companies granted pursuant to the Credit Facility shall have been released, the Corporations and the Sellers shall have obtained the release and termination of the guaranties made by each of the Consolidated Companies pursuant to the Credit Facility and the certificates representing all outstanding shares of BBMC Common Stock and RSI Common Stock shall be available for delivery by the Sellers to the Purchaser pursuant to Section 2.3.

Section 7.2 *Conditions to the Purchaser's Obligations.* The obligations of the Purchasers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment prior to or at Closing of each of the following conditions:

7.2.1 The representations and warranties of the Corporations and the Sellers set forth in Articles III and IV shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality and Material Adverse Change, which representations and warranties shall be true in all respects) on the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be measured only as of such specified date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitations as to "materiality" or a Material Adverse Change set forth therein) does not have and is not reasonably likely to result in, individually or in the aggregate, a Material Adverse Change with respect to the Consolidated Companies, provided that the representations and warranties set forth in Sections 3.3, 3.4, 3.5, 4.2, 4.3 and 4.4 shall be true and correct in all material respects (other than representations and warranties which are qualified as to materiality, which representations and warranties shall be true in all respects) on the date hereof and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be measured as of such specified date).

7.2.2 Each of the Sellers and each of the Corporations shall have performed in all material respects each obligation and agreement and shall have complied in all material respects with each covenant to be performed and complied with by it under this Agreement at or prior to the Closing.

7.2.3 Except as disclosed in the Financial Statements or in Section 3.6 of the Corporations' Disclosure Schedule, during the period from September 30, 1999 through the Closing Date, there shall not have been any Material Adverse Change affecting the Consolidated Companies, nor any loss or damage to the assets of the Consolidated Companies, whether or not insured, which materially affects the Consolidated Companies' ability to conduct the Businesses. The Purchaser shall have received a certificate (executed by the President or any Vice President of the Parent Seller to such officer's best knowledge), dated the Closing Date, to the foregoing effect. It is understood that for purposes of this Agreement (including the provisions of Section 7.2.1 and Section 7.2.2), events which occur after the date hereof and which (x) result principally from the acts or omissions of the Purchasers and/or their respective Affiliates, (y) constitute a change in or effect upon the assets (including intangible assets), liabilities (contingent or otherwise), condition (financial or otherwise) or results of operations of the Consolidated Companies arising out of or principally attributable to conditions, events or circumstances generally affecting the industries in which the Consolidated Companies operate or (z) constitute a change in or effect upon the assets (including intangible assets), liabilities (contingent or otherwise), condition (financial or otherwise) or results of operations of the Consolidated Companies arising out of or attributable to the loss by the Consolidated Companies of any of their customers (including business of such customers), suppliers or employees (including any financial consequences of such loss of customers (including business of such customers), suppliers or employees) due principally to the transactions contemplated hereby or the public announcement of this Agreement shall not be taken into account in determining whether any Material Adverse Change has transpired with respect to the Sellers or the Consolidated Companies.

7.2.4 (i) The authorizations, consents, waivers, approvals or other actions required in connection with the execution, delivery and performance of this Agreement by the Corporations and the Sellers and referred to in Section 2 of the Corporations' Disclosure Schedule, shall have been obtained and shall be in full force and effect; and (ii) all authorizations, consents, waivers, approvals or other actions necessary to permit the

Purchasers to own the RSI Common Stock and the BBMC Common Stock shall have been obtained and shall be in full force and effect.

7.2.5 Prior to or at the Closing, the Sellers and the Corporations shall have delivered to the Purchaser the following:

(i) a certificate of the President or a Vice President of the Parent Seller, dated the Closing Date, to the effect that (1) the person signing such certificate is familiar with this Agreement and (2) to the best of such person's knowledge, the conditions specified in Sections 7.2.1, 7.2.2, 7.2.3 and 7.2.4 have been satisfied; and

(ii) a certificate of the Secretary or Assistant Secretary of each of the Sellers and each of the Corporations, dated the Closing Date, as to the incumbency of any officer of such entity executing this Agreement or any document related hereto; and setting forth the organizational documents of such entity and all amendments thereto and the resolutions of such entity's Board of Directors (or Executive Committees thereof) authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby.

7.2.6 The Parent Seller shall have executed and delivered the Transition Support Agreement and the Sellers shall have executed and delivered the Escrow Agreement.

Section 7.3 *Conditions to the Sellers' Obligations.* The obligations of the Sellers and the Corporations to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of each of the following conditions:

7.3.1 The representations and warranties of the Purchasers set forth in Article V shall be true and correct in all material respects (other than representations and warranties which are qualified as to materiality and Material Adverse Change, which representations and warranties shall be true in all respects) on the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be measured only as of such specified date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitations as to "materiality" or a Material Adverse Change set forth therein) does not have and is not reasonably likely to have, individually or in the aggregate, a Material Adverse Change with respect to the Purchasers, provided that the representations and warranties set forth in Sections 5.2 and 5.3 shall be true and correct in all material respects (other than representations and warranties which are qualified as to materiality, which representations and warranties shall be true in all respects) on the date hereof and as of the Closing Date as though made on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be measured as of such specified date).

7.3.2 The Purchasers shall have performed in all material respects each obligation and agreement and shall have complied in all material respects with each covenant to be performed and complied with by them under this Agreement at or prior to the Closing.

7.3.3 Prior to or at the Closing, each of the Purchasers shall have delivered to the Seller the following:

(i) a certificate of the President or a Vice President of such Purchaser, dated the Closing Date, to the effect that (1) the person signing such certificate is familiar with

this Agreement and (2) to the best of such person's knowledge, the conditions specified in Sections 7.3.1 and 7.3.2 have been satisfied; and

(ii) a certificate of the Secretary or Assistant Secretary of such Purchaser, dated the Closing Date, as to the incumbency of any officer of such Purchaser executing this Agreement or any document related hereto and setting forth the certificate of incorporation and in the case of the Parent Purchaser, its code of regulations, and in the case of the Purchaser, its by-laws, and all amendments thereto and the resolutions of each such Purchaser's Board of Directors (or Executive Committee thereof) authorizing the execution, delivery and consummation of this Agreement and the transactions contemplated hereby.

7.3.4 At the Closing, the Purchaser shall have tendered the Preliminary Purchase Price in accordance with Sections 2.3.4 and 2.3.5.

7.3.5 The Purchasers shall have executed and delivered the Transition Support Agreement and the Escrow Agreement.

## **ARTICLE VIII**

### **Termination**

Section 8.1 *Termination*. This Agreement may be terminated at any time prior to the consummation of the Closing, under the following circumstances:

8.1.1 by mutual written consent of the Parent Seller and the Purchaser;

8.1.2 by either the Parent Purchaser or the Parent Seller if any permanent injunction or other order of a court or other competent Governmental Authority preventing the consummation of the transactions contemplated hereby shall have become final and nonappealable;

8.1.3 by either the Parent Purchaser or the Parent Seller if the Closing shall not have been consummated on or before the Outside Date; provided that the right to terminate this Agreement under this Section 8.1.3 shall not be available to any party (i) whose willful act, willful failure to act, or failure to perform all of its obligations and satisfy all conditions to be performed or satisfied by it hereunder, or (ii) whose Affiliate's willful act, willful failure to act, or failure to perform all of its obligations and satisfy all conditions to be performed or satisfied by it hereunder, has been the cause of or resulted in the failure of the Closing to be consummated on or before the Outside Date);

8.1.4 by the Purchaser or the Parent Seller if, at or before the completion of the Closing, it shall have discovered that any representation or warranty made in this Agreement for its benefit, or in any certificate, exhibit or document furnished to it pursuant to this Agreement, is untrue in any material respect (other than representations and warranties that are qualified as to materiality or Material Adverse Change, which representations and warranties will give rise to termination if untrue in any respect); provided that, in each case, (a) the party seeking to terminate this Agreement is not then in material breach of any material representation or warranty contained in this Agreement, (b) such untrue representation or warranty cannot be or has not been cured within thirty (30) calendar days after receipt of written notice of such breach and (c) in the case of representations or warranties by the Sellers or the Corporations, except for the representations and warranties contained in Sections 3.3, 3.4, 3.5, 4.2, 4.3 and 4.4, and in the case of representations or warranties by the Purchasers,

except for the representations and warranties contained in Sections 5.2 and 5.3, such untrue representation and warranty will represent, or is reasonably likely to represent, a Material Adverse Change with respect to the Consolidated Companies, or a Material Adverse Change with respect to the Purchasers, as the case may be, and in each case after giving effect to consummation of the transactions contemplated by this Agreement;

8.1.5 by the Parent Purchaser if the Sellers or the Corporations shall have defaulted in the performance of any material obligation under this Agreement; *provided, however,* that in order to terminate this Agreement under this Section 8.1.5, the Purchasers shall, upon discovery of such a breach or default, give written notice thereof to the breaching party and the breaching party shall fail to cure the breach or default by the earlier of twenty (20) calendar days after receipt of such notice or the Closing Date;

8.1.6 by the Parent Seller if the Purchasers shall have defaulted in the performance of any material obligation under this Agreement; *provided, however,* that in order to terminate this Agreement under this Section 8.1.6, the Parent Seller shall, upon discovery of such a breach or default, give written notice thereof to the Purchasers and the Purchasers shall fail to cure the breach or default by the earlier of twenty (20) calendar days after receipt of such notice or the Closing Date;

8.1.7 by the Parent Purchaser, in the event that the conditions to the Purchasers' obligations set forth in Article VII hereof have not been satisfied or waived by the date set for the Closing or in the event that the Parent Purchaser reasonably determines that any such condition cannot possibly be satisfied prior to the Outside Date; and

8.1.8 by the Parent Seller, in the event that the conditions to the Sellers' obligations set forth in Article VII hereof have not been satisfied or waived by the date set for the Closing or in the event that the Parent Seller reasonably determines that any such condition cannot possibly be satisfied prior to the Outside Date.

#### Section 8.2 *Effect of Termination.*

8.2.1 In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement, except for the last two sentences of Section 6.1.1 and the provisions of Sections 10.2 and 10.9 and this Section 8.2, shall become void and have no effect, without any liability on the part of any party hereto or its directors, officers or stockholders. Notwithstanding the foregoing, nothing in this Section 8.2 shall relieve any party to this Agreement of liability for a material breach of any covenant in this Agreement and provided, further, however, that if it shall be judicially determined that termination of this Agreement was caused by an intentional breach of this Agreement, then, in addition to other remedies at law or equity for breach of this Agreement, the party so found to have intentionally breached this Agreement shall indemnify and hold harmless the other parties for their respective out-of-pocket costs, including the fees and expenses of their counsel, accountants, financial advisors and other experts and advisors as well as fees and expenses incident to the negotiation, preparation and execution of this Agreement and related documentation.

### ARTICLE IX

#### **Survival of Representations and Warranties; Indemnification**

##### Section 9.1 *Survival of Representations and Warranties.*

9.1.1 Except as set forth in Sections 9.1.2, 9.1.3 and 9.1.4, the representations and warranties provided for in this Agreement shall survive the Closing and remain in full force and effect, for the benefit of the parties hereto and their successors and assigns, for a period of twelve (12) months after the Closing Date.

9.1.2 The representations and warranties provided for in Sections 3.15.1, 3.15.2, 3.15.4 and 3.15.5 shall survive the Closing and remain in full force and effect for the benefit of the parties hereto and their successors and assigns until the date on which the Final Accountant's Report is rendered by the Independent Accountant or, if no issues are submitted to an Independent Accountant pursuant to Section 2.5, the date on which the parties hereto agree upon the Final Accountant's Report.

9.1.3 The representations and warranties provided for in Section 3.12 shall survive the Closing and remain in full force and effect, for the benefit of the Purchasers and their successors and assigns, for a period ending eighteen (18) months after the Closing Date.

9.1.4 The representations and warranties provided for in Sections 3.2, 3.3, 3.4, 3.14, 4.1, 4.2, 4.4, 4.5, 5.1, 5.2 and 5.5 shall survive the Closing and remain in full force and effect, for the benefit of the parties hereto and their successors and assigns, for an indefinite period.

9.1.5 The survival period of each representation or warranty as provided in this Section 9.1 is hereinafter referred to as the "Survival Period."

#### Section 9.2 *Indemnification.*

9.2.1 Subject to the limitations set forth in Section 9.2.4 and 9.5, subsequent to the Closing, the Sellers shall, jointly and severally, indemnify and hold harmless the Purchasers, their Subsidiaries and Affiliates, officers, directors, employees, agents and representatives, the Consolidated Companies, and any Person claiming by or through any of the foregoing, against and in respect of any and all claims, costs, expenses, damages, penalties, liabilities, losses or deficiencies (including reasonable attorneys' and consultants' fees and other reasonable costs and expenses) (the "Damages") arising out of, resulting from or incurred in connection with (i) any inaccuracy (without giving effect to any reference to materiality, knowledge or Material Adverse Change in any specific representation and warranty other than the references to materiality, knowledge or Material Adverse Change in the provisions identified in Appendix 9.2.1 annexed hereto, it being understood that the references listed in such Appendix 9.2.1 shall be given full force and effect) in any representation, other than the representations set forth in Section 3.8 of this Agreement, made by the Sellers or the Corporations in this Agreement for the applicable Survival Period, (ii) the breach by the Sellers of any covenant or agreement to be performed by the Sellers hereunder and the breach by the Corporations of any covenant or agreement to be performed by the Corporations hereunder at or prior to the Closing, (iii) any Taxes imposed upon or relating to (A) any of the Consolidated Companies for any Pre-Closing Period, except to the extent such Taxes are specifically identified as Taxes in the consolidated balance sheet of the Consolidated Companies as of the Closing Date that is contained in the Final Accountant's Report, (B) the Transfer UNITI Items for any taxable period, the UNITI System Assignment and Assumption Agreement, the transfer of the Transfer UNITI Items pursuant to the UNITI System Assignment and Assumption Agreement, the Transfer Assets (including the copyrights assigned pursuant to the Copyright Assignment and Assumption Agreement) for the Pre-Closing Period, the Transfer Real Property Deed, the transfer of the Transfer Real Property pursuant to the Transfer Real Property Deed, the Copyright Assignment and Assumption Agreement, the assignment of copyrights and

assumption of liabilities pursuant to the Copyright Assignment and Assumption Agreement, the Assignment of Marks, the assignment of the Transfer Marks pursuant to the Assignment of Marks, the Assignment of Lease or the assignment and assumption of the Transfer Lease pursuant to the Assignment of Lease, the Assignment of Data Center Assets, the assignment of Transfer Data Center Assets and assumption of related liabilities pursuant to the Assignment of Data Center Assets and assumption of related liabilities and (C) any Tax imposed upon or relating to the Sellers or the Seller Affiliated Group for any period, including any such Tax for which the Consolidated Companies may be liable under Section 1.1502-6 of the Treasury Regulations (or any comparable provision of state, local or foreign law), as a transferee or successor, by contract or otherwise and (iv) all Damages suffered by the Consolidated Companies subsequent to the Closing Date with respect to the following matters: (U) the "Northwestern Litigation" (as defined in Section 3.13 of the Corporations' Disclosure Schedule), (V) the "Nicol Litigation" (as defined in Section 3.13 of the Corporations' Disclosure Schedule), (W) the latex glove cases described in a schedule attached to Section 3.13 of the Corporations' Disclosure Schedule, (X) the "Lemelson Suit" (as defined in Section 3.10 of the Corporations' Disclosure Schedule), (Y) the fee dispute with Premier described in Section 3.19 of the Corporations' Disclosure Schedule and (Z) the "IBS Claim" (as defined in Section 3.13 of the Corporations' Disclosure Schedule).

9.2.2 Subject to the limitations set forth in Sections 9.2.4 and 9.5, subsequent to the Closing, the Purchasers shall indemnify and hold harmless the Sellers, their Affiliates, officers, directors, employees, agents and representatives, and any Person claiming by or through any of them, against and in respect of any and all Damages arising out of, resulting from or incurred in connection with (i) any inaccuracy (without giving effect to any reference to materiality, knowledge or Material Adverse Change in any specific representation and warranty) in any representation made by the Purchasers in this Agreement, (ii) the breach by the Purchasers of any covenant or agreement to be performed by them hereunder, (iii) any environmental testing performed or conducted by or on behalf of the Purchasers pursuant to Section 6.1.1 and (iv) any guaranties given by the Parent Seller or its Subsidiaries (other than the Consolidated Companies) with respect to (a) liabilities of the Consolidated Companies included in the consolidated balance sheet of the Consolidated Companies as of the Closing Date that is contained in the Final Accountant's Report or (b) liabilities of the Consolidated Companies arising on and after the Closing Date under leases or other agreements of the Consolidated Companies in effect as of the Closing Date. The Purchasers shall use commercially reasonable efforts to cause the Parent Seller and its Subsidiaries (other than the Consolidated Companies) to be released from all such guaranties.

9.2.3 Any Person providing indemnification pursuant to the provisions of this Section 9.2 is hereinafter referred to as an "Indemnifying Party" and any Person entitled to be indemnified pursuant to the provisions of this Section 9.2 is hereinafter referred to as an "Indemnified Party."

9.2.4 The Sellers' indemnification obligations contained in Section 9.2.1(i) shall not apply to any claim for Damages until the aggregate of all such claims total one million dollars (\$1,000,000) (the "Basket Amount"), in which event the Sellers' indemnity obligation contained in Section 9.2.1(i) shall apply to the total amount in excess of the Basket Amount, subject to a maximum liability to the Purchasers, in the aggregate, of twenty million dollars (\$20,000,000) (the "Cap Amount") for all claims under Section 9.2.1(i) in the aggregate. It is understood and agreed that neither the Basket Amount nor the Cap Amount are applicable to the Sellers' indemnification obligations contained in Sections 9.2.1(ii), 9.2.1(iii) or 9.2.1(iv). The Purchasers' indemnification obligation contained in Section 9.2.2(i) shall not apply to any claim for Damages until the aggregate of all such claims total the Basket Amount, in which event the

Purchasers' indemnity obligation contained in Section 9.2.2(i) shall apply to the total amount in excess of the Basket Amount, subject to a maximum liability to the Sellers, in the aggregate, of the Cap Amount for all claims under Section 9.2.2(i) in the aggregate. It is understood and agreed that neither the Basket Amount nor the Cap Amount are applicable to the Purchasers' indemnification obligations contained in Sections 9.2.2(ii), 9.2.2(iii) or 9.2(iv). All claims (other than claims relating to Taxes) made during the relevant Survival Period shall be counted in determining whether the Basket Amount or the Cap Amount specified above have been achieved; *provided, however*, that no claim made pursuant to Section 9.2.1(ii), 9.2.1(iii), 9.2.1(iv), 9.2.2(ii), 9.2.2(iii) or 9.2.2(iv) shall be counted toward determining whether the thresholds applicable to the Basket Amount or the Cap Amount have been achieved. Notwithstanding the foregoing, (a) no party shall be obligated to provide indemnification with respect to any claim under Sections 9.2.1(i) or 9.2.2(i) for Damages if the entire amount of Damages relating to such claim is less than \$15,000 (aggregating for such purposes like, similar or related claims) and (b) no party shall be obligated to provide indemnification under Sections 9.2.1(i) or 9.2.2(i) unless it is notified of the claim for Damages within the Survival Period applicable to such claim.

9.2.5 The provisions of Article IX shall constitute the sole and exclusive remedy of any Indemnified Party for Damages arising out of, resulting from or incurred in connection with any inaccuracy in any representation or the breach of any warranty made by the Purchaser, the Sellers or the Corporations in this Agreement or in connection with any failure by the Consolidated Companies to pay any Taxes with respect to any Tax periods ending on or before the Closing Date.

Section 9.3 *Procedures for Third Party Claims.* In the case of any claim for indemnification arising from a claim of a third party (a "Third Party Claim"), an Indemnified Party shall give prompt written notice to the Indemnifying Party of any claim or demand of which such Indemnified Party has knowledge and as to which it may request indemnification hereunder. The Indemnifying Party shall have the right (and if it elects to exercise such right, to do so within 30 days after receiving notice from the Indemnified Party) to defend and to direct the defense against any such Third Party Claim, in its name or in the name of the Indemnified Party, as the case may be, at the expense of the Indemnifying Party, and with counsel selected by the Indemnifying Party, unless (a) the Indemnifying Party shall not have taken any action to defend such Third Party Claim within such 30-day period, or (b) the Indemnified Party shall have reasonably concluded that (i) there is a conflict of interest between the Indemnified Party and the Indemnifying Party in the conduct of the defense of such Third Party Claim or (ii) the Indemnified Party has one or more material defenses not available to the Indemnifying Party. Notwithstanding anything in this Agreement to the contrary (other than the last sentence of this Section 9.3), the Indemnified Party shall, at the expense of the Indemnifying Party, cooperate with the Indemnifying Party, and keep the Indemnifying Party fully informed, in the defense of such Third Party Claim. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel employed at its own expense; *provided, however*, that, in the case of any Third Party Claim described in clause (i) or (ii) of the second preceding sentence or as to which the Indemnifying Party shall not in fact have employed counsel to assume the defense of such Third Party Claim within such 30-day period, the reasonable fees and disbursements of such Indemnified Party's counsel shall be at the expense of the Indemnifying Party. The Indemnifying Party shall have no indemnification obligations with respect to any Third Party Claim which shall be settled by the Indemnified Party without the prior written consent of the Indemnifying Party, which consent (except as set forth in the immediately following sentence) shall not be unreasonably withheld or delayed. Notwithstanding the foregoing provisions of this Section 9.3, the Parent Seller shall have the right to control all claims, proceedings, suits or other actions subject to indemnification by

Parent Seller under Section 9.2.1(iv), including the selection of legal counsel, provided that the Parent Purchaser shall have the right to participate in such Third Party Claim with legal counsel at its own expense, shall be kept advised of developments and shall cooperate with the Parent Seller therein; the determination as to whether or not to settle any claims, proceedings, suits or other actions subject to indemnification by Parent Seller under Section 9.2.1(iv) shall be made by the Parent Seller. The provisions above of this Section 9.3 shall not apply to Third Party Claims involving Taxes, which claims shall instead be governed by the provisions of Section 6.12.

**Section 9.4 *Procedures for Inter-Party Claims.*** In the event that an Indemnified Party determines that it has a claim for Damages against an Indemnifying Party hereunder (other than as a result of a Third Party Claim), the Indemnified Party shall give prompt written notice thereof to the Indemnifying Party, specifying the amount of such claim and any relevant facts and circumstances relating thereto. The Indemnified Party shall provide the Indemnifying Party with reasonable access to its books and records for the purpose of allowing the Indemnifying Party a reasonable opportunity to verify any such claim for Damages. The Indemnified Party and the Indemnifying Party shall negotiate in good faith for a thirty (30) day period regarding the resolution of any disputed claims for Damages. If no resolution is reached with regard to such disputed claim between the Indemnifying Party and the Indemnified Party within such thirty (30) day period, the Indemnified Party shall be entitled to seek appropriate remedies in accordance with the terms hereof. Promptly following the final determination of the amount of any Damages claimed by the Indemnified Party, the Indemnifying Party shall pay such Damages to the Indemnified Party by wire transfer or check made payable to the order of the Indemnified Party, without interest. In the event that the Indemnified Party is required to institute legal proceedings in order to recover Damages hereunder, the cost of such proceedings (including costs of investigation and reasonable attorneys' fees and disbursements) shall be added to the amount of Damages payable to the Indemnified Party if the Indemnified Party recovers Damages in such proceedings. In the event that a party hereto claiming to be an Indemnified Party institutes legal proceedings in order to recover Damages hereunder and the applicable court refuses to award any Damages to such party, such party shall reimburse the defending party for the cost of such proceedings (including costs of investigation and reasonable attorneys' fees and disbursements).

**Section 9.5 *Calculation of Damages.*** The Damages suffered by any party shall be calculated after giving effect to (a) all applicable Tax consequences of the event giving rise to indemnification and (b) the receipt of any available insurance proceeds. Notwithstanding any provision herein to the contrary, except for purposes of Section 9.2.1(iii), the term "Damages" shall not include any liability to the extent that such liability is reflected as a liability in the consolidated balance sheet of the Consolidated Companies as of the Closing Date that is contained in the Final Accountant's Report.

**Section 9.6 *Applicability of the Escrow Agreement.*** To the extent that claims are made against the Sellers pursuant to this Article IX prior to the time that all funds have been disbursed under the Escrow Agreement, the terms of the Escrow Agreement shall govern with respect to the obligations of the Escrow Agent to make payments to the Purchasers in settlement of the Purchasers' rights under this Article IX.

## **ARTICLE X**

### **Miscellaneous**

Section 10.1 *Notices.* All notices or other communications required or permitted hereunder shall be in writing and shall be delivered personally, by facsimile, by overnight courier or sent by certified, registered or express air mail, postage prepaid, and shall be deemed given when so delivered personally, or when so received by facsimile or courier, or if mailed, three calendar days after the date of mailing, as follows:

If to the Sellers or the Corporations:     Bergen Brunswick Corporation  
4000 Metropolitan Drive  
Orange, California 92868  
Telephone: (714) 385-4000  
Facsimile: (714) 385--6815  
Attention: Milan A. Sawdei, Chief Legal Officer

with a copy (which shall not constitute notice) to:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Telephone: (973) 597-2500  
Facsimile: (973) 597-2400  
Attention: Peter H. Ehrenberg, Esq.

If to the Purchasers:                     Cardinal Health, Inc.  
7000 Cardinal Place  
Dublin, Ohio 43017  
Telephone: (614) 757-7354  
Facsimile: (614) 757-6948  
Attention: Steven Alan Bennett, Chief Legal Officer

With a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Telephone: (212) 403-1309  
Facsimile: (212) 403-2309  
Attention: David A. Katz, Esq.

or to such other address as any party hereto shall notify the other parties hereto (as provided above) from time to time.

Section 10.2 *Expenses.* Regardless of whether the transactions provided for in this Agreement are consummated, except as otherwise provided herein, each of the parties hereto shall pay its own expenses incident to this Agreement and the transactions contemplated herein (including legal fees, accounting fees and investment banking fees).

Section 10.3 *Governing Law; Consent to Jurisdiction.* This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without reference to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court for any District within such state for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions

contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 10.4 *No Jury Trial*. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect to any litigation directly or indirectly arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each such party understands and has considered the implications of this waiver, (iii) each such party makes this waiver voluntarily, and (iv) each such party has been induced to enter into this Agreement by, among other things, the waivers and certifications in this Section 10.4.

Section 10.5 *Assignment; Successors and Assigns; No Third Party Rights*. Except as otherwise provided herein, this Agreement may not be assigned by operation of law or otherwise, and any attempted assignment shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. This Agreement shall be for the sole benefit of the parties to this Agreement, and their respective successors, assigns and legal representatives, and is not intended, nor shall be construed, to give any Person, other than the parties hereto and their respective successors, assigns and legal representatives any legal or equitable right, remedy or claim hereunder.

Section 10.6 *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

Section 10.7 *Titles and Headings*. The headings and table of contents in this Agreement are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

Section 10.8 *Entire Agreement*. This Agreement (including the disclosure schedules delivered in connection with this Agreement and the agreements referenced in the appendices attached hereto), and the confidentiality agreement among the parties dated April 28, 2000 constitute the entire agreement among the parties with respect to the matters covered hereby and thereby and supersede all previous written, oral or implied understandings among them with respect to such matters.

Section 10.9 *Amendment and Modification*. This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors (or Executive Committees thereof). Notwithstanding the foregoing, this Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 10.10 *Publicity; Public Announcements.* Unless otherwise required by applicable laws or the requirements of any national securities exchange (and in that event only if time does not permit), at all times prior to the earlier of the consummation of the Closing or termination of this Agreement pursuant to Section 8.1, the Sellers and the Purchasers shall consult with each other before issuing any press release with respect to the transactions contemplated hereby and shall not issue any such press release prior to such consultation. The Sellers and the Purchasers will consult with each other concerning the means by which the Corporations' employees, customers, suppliers and others having dealings with the Corporations will be informed of this Agreement and the transactions contemplated hereby.

Section 10.11 *Waiver.* Any of the terms or conditions of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof, but only by a writing signed by the party or parties waiving such terms or conditions.

Section 10.12 *Severability.* The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by law.

Section 10.13 *No Strict Construction.* The Purchasers, the Corporations and the Sellers each acknowledge that this Agreement has been prepared jointly by the parties hereto, and shall not be strictly construed against any party.

Section 10.14 *Knowledge.* To the extent that any representation is made to the knowledge of the Sellers or the Corporations, such knowledge shall refer to the actual knowledge, after reasonable inquiry, of the individuals listed on Appendix 10.14.

Section 10.15 *Affiliate Status.* To the extent that a party is required hereunder to take certain action with respect to entities designated herein as such party's Affiliates, such obligation shall apply to such entities only during such period of time that such entities are Affiliates of such party.

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

BERGEN BRUNSWIG CORPORATION

By: \_\_\_\_\_  
Name: Neil F. Dimick  
Title: Executive Vice President

DURR FILLAUER MEDICAL, INC.

By: \_\_\_\_\_  
Name: Neil F. Dimick  
Title: Executive Vice President

BERGEN BRUNSWIG MEDICAL CORPORATION

By: \_\_\_\_\_  
Name: Neil F. Dimick  
Title: Executive Vice President

RANDELL SURGICAL, INC.

By: \_\_\_\_\_  
Name: Neil F. Dimick  
Title: Executive Vice President

ALLEGIANCE CORPORATION

By: \_\_\_\_\_  
Name: Brendan A. Ford  
Title: Executive Vice President

CARDINAL HEALTH, INC.

By: \_\_\_\_\_  
Name: Brendan A. Ford  
Title: Executive Vice President

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**PROCARE PHARMACY, INC.  
(and its Designated Affiliates),**

**STADTLANDER OPERATING COMPANY, L.L.C.,**

**STADTLANDER LICENSING COMPANY, LLC,**

**STADTLANDER DRUG OF CALIFORNIA, LP,**

**STADTLANDER DRUG OF HAWAII, LP,**

**AND**

**BERGEN BRUNSWIG CORPORATION**

**DATED AS OF JULY 3, 2000**

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## **ASSET PURCHASE AGREEMENT**

THIS AGREEMENT is made and entered into as of the 3<sup>rd</sup> day of July, 2000 by and among: (i) ProCare Pharmacy, Inc., a Rhode Island corporation ("ProCare"), and its designated Affiliates listed on Schedule 1(a) attached hereto (collectively, the "Buying Group" and each individually, a "Buying Group Member"); (ii) Stadtlander Operating Company, L.L.C., a Delaware limited liability company ("OPCO"); (iii) Stadtlander Licensing Company, LLC, a Delaware limited liability company ("Licensing Company"); (iv) Stadtlander Drug of California, LP, a Delaware limited partnership ("California LP"); (v) Stadtlander Drug of Hawaii, LP, a Delaware limited partnership ("Hawaii LP," and together with OPCO, Licensing Company, and California LP, collectively the "Selling Group" and each individually, a "Selling Group Member"); and (vi) Bergen Brunswig Corporation, a New Jersey corporation (the "Parent").

### **RECITALS**

WHEREAS, Selling Group is engaged in, among other things, the specialty retail pharmacy and the specialty mail order pharmacy business (such businesses, other than the Corrections Division Business (as hereinafter defined) collectively, the "Business");

WHEREAS, Parent, directly or indirectly, owns all of the issued and outstanding equity interests of each Selling Group Member;

WHEREAS, Selling Group desires to sell and assign to Buying Group, and Buying Group desires to purchase and assume from Selling Group, substantially all of Selling Group's assets and business operations and certain of its liabilities on the terms and subject to the conditions hereinafter set forth; and

WHEREAS, in order to induce Selling Group and Parent to enter into this Agreement, CVS Corporation, a Delaware corporation, has entered into as of the date hereof a guaranty of Buying Group's obligations hereunder (the "CVS Guaranty").

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

### **ARTICLE I**

#### **CERTAIN DEFINITIONS**

(a) As used herein, the following terms shall have the following meanings in addition to those additional terms as defined herein:

Accounts Receivable Collection Agreement. The term "Accounts Receivable Collection Agreement" shall mean that certain Accounts Receivable Collection Agreement entered into by and between ProCare and OPCO, at the Closing, a copy of which is attached hereto as Exhibit A.

Acquired Net Asset Value. The term "Acquired Net Asset Value" shall mean the difference (positive or negative) between (a) the book value of the Purchased Assets, excluding (i) Net Accounts Receivable, and (ii) goodwill (if any) attributable to the Purchased Assets, and (b) the Balance Sheet Assumed Liabilities, all as reflected on the Closing Balance Sheet prepared in accordance with GAAP and consistent with the practices utilized in the preparation of the May 31, 2000 Agreed Balance Sheet.

Affiliate. The term "Affiliate" of any Selling Group Member or any other specified Person (the "Specified Person") shall mean any other Person that directly or indirectly controls, is controlled by or is

under common control with a Selling Group Member or other Specified Person. For purposes of this definition, the term “control” means the power, whether direct or indirect, to direct or cause the direction of the management or policies of a Person, whether through the ownership of securities, by contract or otherwise.

Agreement. The term “Agreement” shall mean this Asset Purchase Agreement, and any and all amendments, modifications and supplements hereto entered into in accordance with the terms hereof.

ARC Securities. The term “ARC Securities” means the equity securities owned by the Selling Group in Advanced Reproductive Care, Inc., a Delaware corporation, including the warrant to purchase 685,000 shares of its common stock.

AR Valuation Principles. The term “AR Valuation Principles” means the accounting principles set forth on Schedule 1(b) hereto used in the preparation of the May 31, 2000 Agreed Balance Sheet and to be used by Buying Group and Selling Group in determining the value of the Net Accounts Receivable.

ASD. The term “ASD” means ASD Specialty Healthcare, Inc., a Delaware corporation.

ASD Injectibles Business Contracts. The term “ASD Injectibles Business Contracts” shall mean the ASD contracts described on Schedule 1(c) attached hereto.

Assumed Agreements. The term “Assumed Agreements” shall mean all Contracts of any Selling Group Member that relate to the Business: (i) which are listed in Schedule 4.9 hereto as items which shall constitute Assumed Agreements (including Assumed Leases) or (ii) which, pursuant to the terms of Section 4.9 hereof, are not required to be disclosed on Schedule 4.9 but which have been entered into by a Selling Group Member in the ordinary course of business, including without limitation, sales orders, sales contracts, purchase orders, purchase contracts, quotations and bids.

Assumed Leases. The term “Assumed Leases” shall mean all leases of any Selling Group Member that relate to real estate currently used in the Business and which are listed on Schedule 4.9 as leases being assumed.

Assumed Liabilities. The term “Assumed Liabilities” shall mean the obligations and liabilities of the Selling Group expressly assumed by Buying Group pursuant to Section 2.2 hereof and no others.

Bonus Plan. The term “Bonus Plan” shall mean each Selling Group Member’s bonus plan or plans, as more particularly described on Schedule 1(d) hereto.

Business Day. The term “Business Day” means a day on which national banks are open for business in New York.

Buying Group. The term “Buying Group” and “Buying Group Member” shall have the meanings set forth in the preamble hereof and shall include any Affiliate of any Buying Group Member as may be designated in writing to Selling Group prior to the Closing Date.

Buying Group’s Accountants. The term “Buying Group’s Accountants” shall mean KPMG LLP.

Closing. The term “Closing” shall mean the closing of the transactions contemplated herein.

Closing Balance Sheet. The term “Closing Balance Sheet” shall mean the consolidated balance sheet of Selling Group (excluding the Corrections Division Business) as of the end of the business day immediately preceding the Closing Date, which shall be prepared in accordance with GAAP, consistent

with the practices utilized in the preparation of the May 31 Agreed Balance Sheet, and finally determined in accordance with Section 2.5 hereof.

Code. The term “Code” shall mean the Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated thereunder.

Competing Business. The term “Competing Business” means the business of providing comprehensive specialty pharmacy care in the following disease states: HIV, transplant, infertility and Serious Mental Illness (such disease states collectively referred to as “Disease States”). Competing Business means specifically with respect to Serious Mental Illness, the provision of anti psychotropic medicines to patients suffering from Serious Mental Illnesses who are under the active treatment or care of a mental health institution or case worker. Each of the foregoing disease states shall be included within the definition of “Disease States” only so long as any Buying Group Member is engaged in the business of providing comprehensive specialty pharmacy care in that particular disease state. The parties agree that none of the following activities by any Selling Group Member, Parent or any of their Affiliates, including without limitation, Besse Medical Services, Inc., ASD Specialty Healthcare, Inc., ASD Direct and PharMerica, Inc., shall be deemed a Competing Business: (a) the sale or distribution of pharmaceuticals, medical, surgical and laboratory supplies and products and health and beauty products (collectively, “Pharmaceuticals and Products”) to hospitals, alternate sites, pharmacies (closed, open, retail and mail order) and infusion centers where such Pharmaceuticals and Products will be used for resale or to physicians offices where such Pharmaceuticals and Products will be used in office administration, including without limitation, Pharmaceuticals and Products used in the treatment of Disease States; (b) operating a comprehensive specialty pharmacy business relating to any disease states other than the Disease States; (c) engaging in the medical injectibles business (excluding the injectibles business derived from the scope of the ASD Injectibles Business Contracts, other than hemophilia); (d) engaging in the Corrections Division Business; (e) the fulfillment for or on behalf of any Internet Supplier of any orders for Pharmaceuticals or Products to any customers of such Internet Supplier or to users of such Internet Supplier’s website; (f) the acquisition of any equity or the provision of management, consulting or administrative services to, or the development, launching or operation, or otherwise becoming an Affiliate of, an Internet Supplier; and (g) entering into any agreement or business arrangement with respect to or otherwise participating in any joint marketing arrangement, joint venture, strategic marketing alliance, cooperative or group purchasing organization, or any other contractual or partnering arrangement with any Person; provided, however, that the entity that is contracted with does not provide a comprehensive specialty pharmacy business in the Disease States as a result of such agreement, arrangement or joint venture.

Competing Corrections Division Business. The term “Competing Corrections Division Business” means an institutional pharmacy business that provides patient specific medications, medical and surgical supplies and commissary goods to inmates detained in either public or private correctional facilities, including prisons, jails and juvenile detention centers. The parties agree that the following activities by any Buying Group Member or any of their Affiliates shall not be deemed a Competing Corrections Division Business: engaging in an institutional pharmacy business for inmates detained in the State of Illinois correctional facilities.

Corrections Division Business. The term “Corrections Division Business” means the institutional pharmacy business of OPCO and its Affiliates that provides patient specific medications, medical and surgical supplies and commissary goods to inmates detained in either public or private correctional facilities, including prisons, jails and juvenile detention centers.

Daily Rx Average. The term “Daily Rx Average” means, for any specified period, the aggregate number of retail and mail order prescriptions filled, shipped and billed by Selling Group for the Business (other than from the San Francisco Wellness Centers located at Castro Street and 18<sup>th</sup> Street) during

such period, as reflected on the SPARC's daily prescription report, the KALOS' daily prescription report, and the Stadtlander returns report issued in the forms attached as Schedule 1(d)(d), less returns, divided by the number of Business Days during such period. The Daily Rx Average for April and May 2000 is 10,347.4.

Employment Agreements. The term "Employment Agreements" shall mean those certain employment agreements (or assignments of existing employment or consulting agreements) between a Buying Group Member and the employees of the Business listed on Schedule 1(e) hereto.

Excluded Property. The term "Excluded Property" shall mean all of the Selling Group's right, title and interest in each of the following:

- (a) the cash or cash equivalents of each Selling Group Member;
- (b) the seals, certificates of formation, minute books, partnership records, equity ownership ledgers, or other records having to do with the organization or formation of any Selling Group Member;
- (c) the rights which accrue or will accrue to a Selling Group Member under this Agreement and the Related Agreements;
- (d) OPCO's membership interests in Stadt Solutions, LLC and the Stadt Solutions, LLC Operating Agreement;
- (e) all capital stock, partnership interests and other equity interests in any Person held by OPCO or its Affiliates, other than the ARC Securities;
- (f) [intentionally omitted];
- (g) the assets used primarily in the Corrections Division Business and the business of the Corrections Division Business as a going concern;
- (h) all right, title and interest in and under all contracts with any Selling Group Member relating to the Excluded Property;
- (i) all intercompany receivables;
- (j) all the consulting agreements and employment agreements entered into by a Selling Group Member that are not Assumed Agreements;
- (k) the assets and properties or rights set forth on Schedule 1(f) hereto, including assets jointly used by Selling Group and Parent and/or Parent's Affiliates as set forth on Schedule 1(f) hereto.
- (l) any claim which Parent, the Selling Group or any other Affiliate of Parent may have against Counsel Corporation or its Affiliates arising out of the negotiation, execution and performance of the Purchase Agreement, dated as of January 21, 1999, by and among the parties hereto (the "Counsel Litigation");
- (m) Tax refunds for periods ending on or before the Closing Date or straddling the Closing Date, other than tax refunds of property and ad valorem taxes to the extent such taxes are (i) imposed with respect to the Purchased Assets and (ii) the obligation of the Buying Group with respect to a portion of a Straddle Tax Period; and
- (n) those assets to be transferred to ASD from OPCO as set forth on Schedule 1(g) hereto.

Family Member. The term “Family Member” shall mean, as applied to any Person who is an individual, such individual’s spouse, parent, sibling, child, grandchild or other lineal descendant thereof and each trust, limited partnership and limited liability company created for the exclusive benefit of one or more of such Persons.

Generally accepted accounting principles or “GAAP” means United States accounting principles which are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors and other recognized principle setting bodies, in effect from time to time.

Governmental Authority. The term “Governmental Authority” shall mean the Federal Government, or any state or political subdivision thereof, or any agency or body of the Federal Government or any state or other political subdivision thereof, or any court asserting jurisdiction over any Selling Group Member or Parent, which is exercising executive, legislative, judicial, regulatory or administrative functions.

Internet Supplier. The term “Internet Supplier” means any Person in the business of selling or distributing, procuring orders for, conducting auctions of, or operating an exchange or marketplace for the purchase and sale of Pharmaceuticals and Products, or any website on or through which such functions are performed, provided that such business is performed or such website is enabled primarily through the Internet, including any now or hereafter existing website of Parent, any Selling Group Member or any of their Affiliates, and provided further that such Person is not engaged in the business of providing comprehensive specialty pharmacy care in the Disease States.

Laws. The term “Laws” shall mean all federal, state, local or foreign laws, treaties, regulations, rules, orders or administrative or judicial determinations having the effect of law.

Liens. The term “Liens” shall mean all liens, pledges, charges, encumbrances, security interests, mortgages, leases, options, conditions, community property rights or other adverse claims of any kind or description.

Material Adverse Change. The term “Material Adverse Change” means, with respect to a Person, a material adverse change in the business, condition (financial or otherwise), prospects, properties, assets, liabilities or results of operations of such Person and its subsidiaries, taken as a whole. When evaluated in the context of any Selling Group Member, the term “Material Adverse Change” shall take into account all of the Selling Group Members taken as a whole. When evaluated in the context of the Buying Group, the term “Material Adverse Change” shall take into account all of the Buying Group Members taken as a whole.

Material Adverse Effect. The term “Material Adverse Effect” means: (a) an adverse effect on the validity or enforceability of this Agreement or any of the Related Agreements in any material respect, (b) an adverse effect that would reasonably be expected to result in a Material Adverse Change, or (c) an impairment of the ability of any Selling Group Member to fulfill its obligations under this Agreement or any of the Related Agreements in any material respect.

May 31, 2000 Agreed Balance Sheet. The term “May 31, 2000 Agreed Balance Sheet” shall mean that certain unaudited consolidated balance sheet of the Business at May 31, 2000 prepared in accordance with GAAP and as agreed upon by Selling Group and Buying Group, a copy of which is attached hereto as Schedule 1(h).

Net Accounts Receivable. The term “Net Accounts Receivable” shall mean, with respect to any date, the accounts receivable of the Selling Group (other than those constituting Excluded Assets) determined on a consolidated basis as of such date, net of reserves for bad debt, all as determined in accordance with GAAP and in accordance with the AR Valuation Principles.

Non-Assumed Liabilities. The term “Non-Assumed Liabilities” shall mean any obligation or liability of a Selling Group Member not expressly assumed by Buying Group pursuant to Section 2.2 of this Agreement, including without limitation the following:

(i) any obligation or liability of any Selling Group Member to Parent or any Affiliate of Parent (whether by contract, lease or otherwise), other than those certain accounts payable due Parent or an Affiliate of Parent more particularly described on Schedule 2.2(a), representing unpaid purchase price of inventory acquired in the ordinary course of business of the Business;

(ii) any obligation or liability of any Selling Group Member: (x) arising prior to or as a result of the Closing to any employees (including, but not limited to, any severance, bonus or vacation pay obligations), agents or independent contractors of such Selling Group Member identified on Schedule 1(i) hereto, or (y) arising as a result of the termination by Selling Group at the Closing of any Rehired Employees, or (z) any obligation or liability to any Rehired Employee for vacation pay on account of any period ending on or prior to the Closing Date, except to the extent accrued on the Closing Balance Sheet and included in the Acquired Net Asset Value;

(iii) any obligation or liability of any Selling Group Member in connection with (x) any Profit Sharing Plan or Bonus Plan (or their respective terminations), except to the extent of any performance bonus for Rehired Employees accrued on the Closing Balance Sheet and included in the Acquired Net Asset Value, or (y) in accordance with any “stay bonus,” “completion bonus,” or other change in control bonus or payment that may be triggered by the transactions contemplated by this Agreement;

(iv) any obligation or liability of any Selling Group Member for any expenses (including without limitation, fees of attorneys, accountants, financial or other advisors to any Selling Group Member) incurred in connection with the transactions contemplated hereby;

(v) any obligation or liability arising out of or resulting from non-compliance by any Selling Group Member (or their respective predecessors) with any Law (including Medicare and Medicaid programs), or any third-party claims related thereto;

(vi) any obligation or liability of any Selling Group Member relating to any product liability claims (whether based upon negligence, breach of warranty, strict liability or otherwise), or relating to any litigation, claim, proceeding or other dispute, whether presently existing or threatened or hereafter arising out of any act or omission taken, or omitted to be taken, or condition or state of facts existing, or arising out of any products (or component parts) which were manufactured or sold, or in respect of services which were performed, on or before the Closing Date, including those with respect to “script fill” liability;

(vii) any obligation or liability of any Selling Group Member arising out of, resulting from, or related to any Excluded Property or the Corrections Division Business;

(viii) any obligation or liability of any Selling Group Member, Parent or Parent’s Affiliates for Taxes for any period, including, but not limited to, those Taxes incident to or arising as a consequence of the consummation of the transactions contemplated hereby; provided, that Buying Group shall be responsible for property and ad valorem taxes which are imposed on the Purchased Assets for any tax period ending after the Closing Date; provided, further, that for any such tax period beginning before and ending after the Closing Date (a “Straddle Tax Period”), Buying Group shall only be responsible for such taxes to the extent they are imposed with respect to the portion of such Straddle Tax Period which begins on the Closing Date, by applying to the total tax due for the entire Straddle Tax Period a ratio determined by calculating the number of days from the Closing Date (inclusive) to the end of the Straddle Tax Period and dividing that number of days by the total number of days in the Straddle

Tax Period and, provided further, that in computing the portion of such Taxes for which Selling Group is responsible, any post-Closing Date adjustment to asset values shall be disregarded;

(ix) any indebtedness of any Selling Group Member for borrowed money or any guarantees in respect of borrowed money;

(x) any brokerage, success, placement or finder's fee payable by any Selling Group Member in connection with the transactions contemplated hereby;

(xi) any obligation or liability of any Selling Group Member arising out of this Agreement or any Related Agreement;

(xii) any obligation or liability arising out of any litigation, investigation or review, pending or threatened, or any audit or recoupment by any Governmental Authority with respect to any Selling Group Member or Parent relating to or arising from actions or omissions occurring on or prior to the Closing Date by any Selling Group Member, Parent or their respective predecessors, including, but not limited to, the litigation, investigations and reviews disclosed on Schedule 4.21, 4.22 or 4.31 hereto; and

(xiii) any obligation or liability of any Selling Group Member in connection with any claim of overpayment or refund (except to the extent specifically provided for on the Closing Balance Sheet and in the calculation of Net Accounts Receivable on the Closing Date and as reflected on the Statement of Credit Balances), rebate, recoupment, settlement, off-set or the like, with respect to the operation of the Business prior to the Closing, including, without limitation, any third-party claims related thereto.

Ordinary course of business. The term "ordinary course of business" means, with respect to any entity, actions which are (a) consistent with the past practices of the designated entity, (b) similar in nature and style to actions customarily taken by the designated entity, and (c) do not require, and in the past have not received, specific authorization by the Board of Directors, Board of Managers, or such similar entity, of the designated entity.

Permitted Liens. The term "Permitted Liens" shall mean (x) Liens for Taxes due but not yet payable as of the applicable date, (y) Liens arising by operation of law in the ordinary course of business, such as mechanics' liens, materialmen's liens, carriers' liens, warehouseman's liens, and similar liens, none of which are substantial in character, amount or extent and none of which materially detract from the value or materially interfere with the present use of the asset to which such Lien attaches, and (z) Liens described on Schedule 1(j) hereto.

Person. The term "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

Primary Dealing Agreement. The term "Primary Dealing Agreement" means that certain Primary Dealing Agreement between ProCare and Bergen Brunswick Drug Company to be executed at the Closing, a copy of which is attached hereto as Exhibit B.

Profit Sharing Plan. The term "Profit Sharing Plan" shall mean any Selling Group Member's defined contribution retirement plan, as more particularly described on Schedule 1(k) hereto.

Purchased Assets. The term "Purchased Assets" shall mean all of the Selling Group's right, title and interest in and to (i) the business of each Selling Group Member as a going concern other than the business of the Corrections Division Business, (ii) the name "Stadtlanders" and any derivatives thereof, and (iii) all of the properties, assets, and rights of any kind, whether tangible or intangible, real or

personal, of each Selling Group Member or in which each Selling Group Member has any interest (other than assets constituting Excluded Property) on the Closing Date, wherever situated and whenever acquired, including without limitation, the following:

- (a) any and all accounts receivable;
- (b) any and all notes, debentures, and other receivables;
- (c) any and all Intellectual Property including, without limitation, the Intellectual Property identified on Schedule 4.17 hereto, and any and all applications for any of the foregoing, together with any and all rights to use any or all of the foregoing, and any and all goodwill associated with any of the foregoing;
- (d) any and all, discoveries, improvements, processes, methods, formulae (secret or otherwise), data, trade secrets, confidential information, technology, know-how, computer software (whether fully developed or in process and including documentation and related object and source codes) and ideas (including without limitation, those in the possession of third parties), whether patentable or not, licenses and other similar rights, and any and all drawings, records, books or other indicia, however evidenced, of the foregoing, together with any and all rights to use any or all of the foregoing, and any and all goodwill associated with any of the foregoing;
- (e) any and all rights existing under the Assumed Agreements;
- (f) any and all machinery, equipment (including without limitation, all transportation, laboratory, testing, and office equipment), vehicles, trade fixtures, computer hardware, world wide web or Internet sites (including without limitation "www.Stadtlander.com" and "www.Stadtassist.com"), domain names, data processing equipment, and furniture, and any and all interests in all leasehold improvements, including without limitation, the fixed assets more particularly described in Selling Group's fixed asset ledger attached as Schedule 1(I) hereto (other than fixed assets on such ledger which are disposed of in the ordinary course of business prior to the Closing Date in accordance with this Agreement);
- (g) any and all office, production or data processing supplies, spare parts, other miscellaneous supplies, and other tangible property of any kind, including without limitation, any and all tangible property located in any warehouse, office or other space;
- (h) any and all raw materials, work-in-process, finished goods, consigned goods and other supplies or inventories;
- (i) any and all deposits and prepayments (other than prepaid expenses) and the value of revenues from pharmaceutical manufacturers' agreements received by the Business prior to the Closing Date that pertain to any period after the Closing Date;
- (j) except to the extent arising from Excluded Property, any and all claims, causes of action, choses in action, rights of recovery and rights of setoff of any kind, including without limitation, any liens, mechanic's liens or any rights to payment or warranties or to enforce payment or warranties in connection with work performed or goods delivered on or prior to the Closing Date, and any and all claims to insurance proceeds due or to become due under Selling Group's applicable insurance policies in connection with any Assumed Liabilities, and in connection with any damage or loss to any Purchased Asset occurring on or prior to the Closing Date;
- (k) any and all records (including prescription files and records) and lists pertaining to customers, suppliers or Rehired Employees and any and all books, ledgers, files and business records;

- (l) any and all advertising materials and other printed or written materials;
- (m) any and all governmental and other licenses, permits, franchises, concessions, authorizations, approvals and certificates (to the extent transferable);
- (n) any and all goodwill as a going concern (excluding goodwill attributable to the Excluded Property) and any and all other intangible properties;
- (o) any and all telephone listings, switches and hardware;
- (p) the ARC Securities;
- (q) the ASD Injectibles Business Contracts;
- (r) those assets used in the operation of the Business that are used jointly by a Selling Group Member and Parent that are described on Schedule 1(m) hereto; and
- (s) any and all other assets of Selling Group not referred to in (a)-(r) above, whether or not reflected on the Closing Balance Sheet, to the extent such assets are not Excluded Property.

Related Agreements. The term “Related Agreements” shall mean the Accounts Receivable Collection Agreement, the Assumption Agreement, the Bill of Sale, the Primary Dealing Agreement and the Transition Support Agreement.

Selling Group's Accountants. The term “Selling Group's Accountants” shall mean Deloitte & Touche LLP.

Selling Group's Knowledge. The term “Selling Group's Knowledge” shall mean the good faith actual knowledge of each of Steve Collis, Kent Harms, William A. Jones, Diana Long, Nathaniel Lord, Rudy Molinet, Milan Sawdei, Shafi Shilad, Gordon Vanscoy, and David Weidner after due and proper inquiry and such due diligence as is reasonably required for such Person to make an informed representation or warranty as to such Person's “knowledge” of a matter.

Selling Group and Selling Group Member. The terms “Selling Group” and “Selling Group Member” have the meanings set forth in the Preamble to the Agreement.

Serious Mental Illness. The term “Serious Mental Illness” means bipolar, schizophrenic and other serious mental illnesses but does not include depression and neurological disorders.

Stadt Solutions, LLC. The term “Stadt Solutions, LLC” means Stadt Solutions, LLC, a Delaware limited liability company.

Statement of Credit Balances. The term “Statement of Credit Balances” means the certificate of Selling Group as to patient/payor credit balances included in Net Accounts Receivable as of the Closing Date, delivered pursuant to Section 3.2(ix) hereof.

Taxes. The term “Taxes” shall mean, with respect to any Person, all foreign, federal, state and local taxes (including deficiencies, interest, additions to tax and penalties relating thereto) of any kind, including, without limitation (x) all income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupancy, social security, Medicare, premium, property or windfall profits tax, customs, duty or other taxes or governmental fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing authority (domestic or foreign)

upon such Person and (y) all liabilities of any Person for the payment of any amount of the type described in the immediately preceding clause (x) as a result of being a party to any tax sharing agreement or purchase and sale agreement or as a result of any express or implied obligation (including, but not limited to, an indemnification obligation).

Tax Returns. The term “Tax Returns” shall mean all returns, declarations, reports, workpapers, estimated returns and information returns and statements of any Person required to be filed or sent by or with respect to it in respect of any Taxes.

Transition Support Agreement. The term “Transition Support Agreement” means that certain Transition Support Agreement between ProCare and Parent to be executed at the Closing, a copy of which is attached hereto as Exhibit C.

(b) In addition, the following terms shall have the meanings ascribed to them in the corresponding Section of this Agreement:

<u>Term</u>	<u>Section</u>
Accounts Receivable Adjustment	2.3(c)
Arbitrator	2.5(b)(iii)
AR Collection Excess Payment	2.3(c)(iii)
Asserting Party	9.2
Assignment	6.11
Assumption Agreement	3.3(a)(ii)
Balance Sheet Assumed Liabilities	2.2(a)
Base Purchase Price	2.3(a)
Bill of Sale	3.2(a)(i)
Business	Recitals
California LP	Preamble
Closing Balance Sheet Adjustment	2.3(b)
Closing Date	3.1
Closing Statements	2.5(a)
Contracts	4.9
Counsel Litigation	See definition of Excluded Property
CVS Guaranty	Recitals
Defending Party	9.2
Disease States	See definition of Competing Business
Disposal Date	6.7(b)
Employee Benefit Plan	4.28
Environmental Laws	4.19(a)
Existing Employment Contracts	4.9(iii)
Hawaii LP	Preamble
Hazardous Substances	4.19(b)
Historical Financial Statements	4.6(a)
HSR Act	6.5(a)
Indemnified Buyer Party	9.1
Intellectual Property	4.17
Interim Financial Statements	6.1(b)
Interim Period	6.1(b)
Licensing Company	Preamble
LLC	5.1
OPCO	Preamble
Outside Date	10.1(e)

Parent	Preamble
Physical Inventory	3.4
Premises	6.9
ProCare	Preamble
Programs	4.31(b)
Purchase Price	2.3(a)
Rehired Employees	6.2(a)
Restrictive Period	11.10(a)
Rx Adjustment	2.3(d)
Rx Count	2.7(a)
Rx Arbitrator	2.7(b)
Selling Group Plans	6.2(c)
Straddle Tax Period	See definition of Non-Assumed Liabilities
Territory	11.10(a)

## ARTICLE II

### ACQUISITION OF PURCHASED ASSETS AND ASSUMPTION OF ASSUMED LIABILITIES BY BUYING GROUP

Section 2.1 Purchase and Sale. At the Closing, upon the terms and conditions set forth in this Agreement, each Selling Group Member shall grant, sell, convey, assign, transfer and deliver to Buying Group, and Buying Group shall purchase, accept and receive from each Selling Group Member, all of Selling Group's right, title and interest in and to all of the Purchased Assets, free and clear of any and all Liens other than Permitted Liens, at the price and in the manner set forth herein, such transaction to be effective as of 12:01 a.m., Eastern Time, on the Closing Date.

Section 2.2 Assumption of Obligations and Liabilities. On the Closing Date, Buying Group shall assume the following, and only the following, obligations and liabilities (the "Assumed Liabilities") of Selling Group:

(a) those current liabilities and obligations of the Selling Group arising in the ordinary course of business of the Business described on the Schedule of Assumed Liabilities attached hereto as Schedule 2.2(a) and properly recorded on the Closing Balance Sheet in accordance with GAAP, consistent with the practices utilized in the preparation of the May 31 Agreed Balance Sheet, expressly excluding, however, any such liabilities or obligations described in clauses (i) – (xiii) in the definition of Non-Assumed Liabilities (subject to such exceptions, the "Balance Sheet Assumed Liabilities");

(b) the liabilities and obligations of each Selling Group Member in respect of the Assumed Agreements, except that Buying Group shall not be required to assume or agree to pay, discharge or perform any such liabilities or obligations arising out of any breach by a Selling Group Member on or prior to the Closing Date of any provision of any Assumed Agreement, including but not limited to, liabilities or obligations arising out of a Selling Group Member's failure to perform in accordance with its terms on or prior to the Closing;

provided, however, that Buying Group's assumption of the liabilities and obligations of any Selling Group Member described in this Section 2.2 shall not be deemed to limit or affect the indemnification, if any, to which Buying Group may be otherwise entitled pursuant to Section 9.1 hereof.

### Section 2.3 Base Purchase Price; Adjustments; AR Collection Excess Payment.

(a) In reliance on the representations, warranties, covenants and agreements of Selling Group contained herein, and upon the terms and subject to the conditions hereinafter set forth, Buying Group shall pay to Selling Group an amount equal to One Hundred Twenty Four Million Dollars (\$124,000,000) (the "Base Purchase Price"), subject to adjustments as provided in paragraphs (b), (c), and (d) below (as adjusted, the "Purchase Price").

(b) The Base Purchase Price shall be subject to adjustment upon final determination of the Closing Statements in accordance with Section 2.5 hereof, as follows (the "Closing Balance Sheet Adjustment"):

(i) the Base Purchase Price shall be increased by the amount by which the Acquired Net Asset Value as of the Closing Date is greater (i.e., a positive number or less negative number) than negative Eight Hundred and Fifteen Thousand Dollars (-\$815,000); or

(ii) The Base Purchase Price shall be decreased by the amount by which the Acquired Net Asset Value as of the Closing Date is less (i.e., a more negative number) than negative Eight Hundred and Fifteen Thousand Dollars (-\$815,000).

(c) The Base Purchase Price shall be subject to further adjustment upon final determination of the Closing Statements in accordance with Section 2.5 hereof, as follows (the "Accounts Receivable Adjustment"):

(i) The Base Purchase Price shall be decreased by the amount, if any, by which Thirty-Nine Million Dollars (\$39 million) exceeds Net Accounts Receivable as of the Closing Date; or

(ii) The Base Purchase Price shall be increased by the amount, if any, by which Net Accounts Receivable as of the Closing Date exceeds Thirty-Nine Million Dollars (\$39 million).

Buying Group or its Affiliates shall pay to Selling Group the AR Collection Excess Payment (as such term is defined in the Accounts Receivable Collection Agreement).

(d) The Base Purchase Price shall be subject to further adjustment upon final determination of the Rx Count in accordance with Section 2.7 hereof, as follows (the "Rx Adjustment"):

(i) The Base Purchase Price shall be increased if the Daily Rx Average for the sixty (60) day period ending on the fifth Business Day preceding the Closing Date is greater than 105% of the Daily Rx Average for April and May 2000 as follows:

(x) If the percentage increase in the Daily Rx Average for such sixty (60) day period exceeds 5% but is less than or equal to 10%, then the Base Purchase Price shall be increased by an amount which is equal to the product of (a) the amount by which the percentage increase exceeds 5%, times (b) the Base Purchase Price (prior to any adjustment under this Section 2.3);

(y) If the percentage increase in the Daily Rx Average for such sixty (60) day period exceeds 10%, the Base Purchase Price shall be increased by an amount which is equal to the sum of (A) the product of 5% times the Base Purchase Price (prior to any adjustment under this Section 2.3) plus (B) the product of (i) 1.5 times (ii) the amount by which the percentage increase over 10% exceeds 10% (up to a maximum increase of 1.5 x 10%), times (iii) the Base Purchase Price (prior to any adjustment under this Section 2.3).

(ii) The Base Purchase Price shall be decreased if the Daily Rx Average for the sixty (60) day period ending on the fifth Business Day preceding the Closing Date is less than 95% of the Daily Rx Average for April and May, 2000 as follows:

(x) If the percentage decrease in the Daily Rx Average for such sixty (60) day period is more than 5% but is less than or equal to 10%, the Base Purchase Price shall be decreased by an amount which is equal to the product of (a) the amount by which the percentage decrease exceeds 5%, times (b) the Base Purchase Price (prior to any adjustment under this Section 2.3);

(y) If the percentage decrease in the Daily Rx Average for the sixty (60) day period is more than 10%, the Base Purchase Price shall be decreased by an amount equal to the sum of (A) the product of 5% times the Base Purchase Price (prior to any adjustment under this Section 2.3) plus (B) the product of (i) 1.5 times (ii) the amount by which the percentage decrease over 10% exceeds 10% (up to a maximum decrease of  $1.5 \times 10\%$ ), times (iii) the Base Purchase Price (prior to any adjustment under this Section 2.3).

There shall be no Rx Adjustment to the Base Purchase Price to the extent that the Daily Rx Average for the sixty (60) day period ending on the fifth Business Day preceding the Closing Date is not less than 95%, and not greater than 105%, of the Daily Rx Average for April and May, 2000.

#### Section 2.4 Payment of Purchase Price.

(a) On the Closing Date, Buying Group shall deliver to Selling Group by one (1) or more wire transfers of immediately available funds, to such account as Selling Group shall designate in writing, an aggregate amount equal to the Base Purchase Price as adjusted by the Rx Adjustment, if any, in accordance with Section 2.3(d).

(b) Upon final determination of the Closing Balance Sheet Adjustment and the Accounts Receivable Adjustment in accordance with Section 2.5 hereof, the Buying Group shall pay to Selling Group, or Selling Group shall pay to Buying Group, as the case may be, within five (5) Business Days after such determination, the net amount due based on adjustments to the Base Purchase Price as provided in Section 2.3(b) and (c) hereof by wire transfer of immediately available funds, together with interest at the "Prime Rate" in effect from time to time as published by the Wall Street Journal, computed from the Closing Date until paid in full.

#### Section 2.5 Closing Statements.

(a) Not later than sixty (60) days after the Closing Date, Buying Group and Buying Group's Accountants shall cause to be prepared and delivered to Selling Group a proposed Closing Balance Sheet, accompanied by (i) notes which specifically identify (x) all Excluded Property and (y) the Purchased Assets and the Balance Sheet Assumed Liabilities reflected on the Closing Balance Sheet and (ii) a detailed schedule setting forth Buying Group's calculation of the Closing Balance Sheet Adjustment and, by utilizing the AR Valuation Principles (which shall include as credit balances only those credit balances set forth on the Statement of Credit Balances), the Accounts Receivable Adjustment (collectively, the "Closing Statements"). In preparing the Closing Statements and accompanying notes and schedules, Buying Group shall consult with Selling Group, and will permit Selling Group to review, upon its request, all workpapers, schedules and calculations related thereto.

(b) If Selling Group does not dispute within forty-five (45) days after receipt of Buying Group's Closing Statements any item included in the proposed Closing Balance Sheet and/or the calculation of the Closing Balance Sheet Adjustment or the Accounts Receivable Adjustment, the proposed Closing Statements delivered by Buying Group shall be deemed to be the final "Closing Statements" and appropriate payment shall be made by Buying Group or Selling Group, as the case may be, pursuant to Section 2.4(b) hereof. In the event Selling Group has a dispute with regard to the appropriateness of any item included in Buying Group's Closing Statements and/or the calculation of the Closing Balance Sheet Adjustment or the Accounts Receivable Adjustment, payment to the extent of amounts not in dispute shall be made promptly (but in no event later than the fifth Business Day following the expiration of said forty-five (45) day period) by Buying Group or Selling Group, as the case may be, pursuant to Section 2.4(b) hereof, with any dispute to be resolved in the following manner:

(i) Selling Group shall notify Buying Group in writing within forty-five (45) days after Selling Group's receipt of Buying Group's proposed Closing Statements which notice shall specify in reasonable detail the nature of the dispute;

(ii) during the thirty (30) day period following Buying Group's receipt of such notice, Buying Group and Selling Group and their respective representatives shall attempt in good faith to resolve such dispute and to determine the appropriateness of the disputed items included in Buying Group's proposed Closing Statements and/or the proposed Closing Balance Sheet Adjustment or the Accounts Receivable Adjustment. During such thirty (30) day period, Buying Group and Selling Group and their respective representatives shall each have access to the working papers and accompanying notes and schedules prepared in connection with the proposed Closing Statements;

(iii) if during such thirty (30) day period specified in subsection (ii) above, Buying Group and Selling Group reach a written agreement with respect to such dispute or Selling Group has withdrawn its objection, such proposed Closing Statements shall be deemed to be the final Closing Statements. If at the end of the thirty (30) day period specified in subsection (ii) above, Buying Group and Selling Group shall have failed to reach a written agreement with respect to such dispute or Selling Group has not withdrawn its objection, the matter shall be referred to a mutually agreeable nationally recognized accounting firm (the "Arbitrator"), which shall act as an arbitrator and shall issue its report resolving all disputes as to the appropriateness of Buying Group's proposed Closing Statements or the proposed Closing Balance Sheet Adjustment or proposed Accounts Receivable Adjustment within sixty (60) days after such dispute is referred to it. Each party may also furnish to the Arbitrator such other information and documents as it deems relevant with appropriate copies or notification being given to the other parties. The Arbitrator shall utilize the AR Valuation Principles (which shall include as credit balances only those credit balances set forth on the Statement of Credit Balances) for the Accounts Receivable Adjustment. The Arbitrator may conduct a conference concerning any disagreement between Buying Group and Selling Group, at which conference each party shall have the right to present additional documents, materials and other evidence and to have present its or their advisors, counsel or accountants. The proposed Closing Statements, as modified by any agreements reached by the parties hereto and adjustments determined to be appropriate by the Arbitrator, shall be deemed to be the final "Closing Statements," and the Arbitrator's calculation of the "Closing Balance Sheet Adjustment " or "Accounts Receivable Adjustment" shall be final and binding. Each of the parties hereto shall bear all costs and expenses incurred by it in connection with such arbitration, except that the fees and expenses of the Arbitrator hereunder shall be shared equally by the parties. This provision for arbitration shall be specifically enforceable by the parties and the decision of the Arbitrator in accordance with the provisions hereof shall be final and binding and there shall be no right of appeal therefrom;

(iv) Nothing herein will be construed to authorize or permit the Arbitrator to determine any question or matter whatsoever under or in connection with this Agreement except the determination of what adjustments, if any, must be made in one or more of the disputed items reflected on the proposed

Closing Statements delivered by Buying Group in order for the final Closing Statements to be determined in accordance with the provisions of this Agreement.

Section 2.6 Sales and Transfer Taxes. All sales, use and transfer taxes including those relating to bulk sales, if any, arising from the transfer of the Purchased Assets shall be borne solely and timely paid by the Selling Group, including, without limitation, any Taxes due with the filing of New York State Department of Taxation and Finance Form TP-584, Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, and City of New York Department of Finance Form NYC-RPT, Real Property Transfer Tax Return.

Section 2.7 Rx Count.

(a) At the close of business on the fourth Business Day preceding the Closing Date, Buying Group and Selling Group shall calculate the Daily Rx Average for the sixty (60) day period ended on the fifth Business Day preceding the Closing Date (the "Rx Count"), using the same methodology as was utilized to calculate the Daily Rx Average for April and May 2000.

(b) If Selling Group and Buying Group agree on the Rx Count prior to the Closing Date, at the Closing, appropriate payment, if any, shall be made by Buying Group or Selling Group, as the case may be, pursuant to Section 2.4(a) hereof. In the event Selling Group and Buying Group have a dispute with regard to the Rx Count, Selling Group and Buying Group agree to submit to immediate arbitration and to use their best efforts to resolve the Rx Count prior to the scheduled Closing Date. A mutually agreeable firm will arbitrate the dispute (the "Rx Arbitrator"), and shall issue its report resolving the dispute, and determine the Rx Count. The scheduled Closing Date will be postponed until the day on which the Rx Arbitrator issues its report setting forth the Rx Count. Each of the parties hereto shall bear all costs and expenses incurred by it in connection with such arbitration, except that the fees and expenses of the Rx Arbitrator hereunder shall be shared equally by the parties. This provision for arbitration shall be specifically enforceable by the parties and the decision of the Rx Arbitrator in accordance with the provisions hereof shall be final and binding and there shall be no right of appeal therefrom.

Section 2.8 Accounts Receivable Collection Agreement. At the Closing, Buying Group will enter into the Accounts Receivable Collection Agreement with Parent and/or Affiliate of Parent.

Section 2.9 Prorations. All payments required to be made by a Selling Group Member under the Assumed Leases, including without limitation all rents, assessments, personal property taxes, real estate taxes, utility charges and heating fuels, shall be apportioned to the best of the parties' abilities between Buying Group and Selling Group as of the Closing and appropriate payments or credits shall be reflected on the Closing Statements. When the actual amounts become known, such prorations shall be recalculated by Buying Group and Selling Group, and Buying Group or Selling Group shall make any additional payments or refunds, as the case may be, not later than sixty (60) days after the Closing Date. Any disputes with respect to such payments or refunds shall be determined by the Arbitrator in accordance with the dispute provisions set forth in Section 2.5 hereof.

### ARTICLE III

#### CLOSING; TERMINATION

Section 3.1 Closing. The Closing shall take place at the offices of Edwards & Angell, LLP, 2800 BankBoston Plaza, Providence, Rhode Island, 02903, at 10:00 a.m., Eastern Time, on a date mutually acceptable to Parent and ProCare, which date (the "Closing Date") is not more than ten (10) Business Days after the date that the final conditions precedent to each of the parties' obligations to consummate the transactions contemplated by this Agreement as set forth in Articles VII and VIII hereof, to the extent

such conditions precedent are capable of being satisfied prior to the Closing Date, have been satisfied or waived in writing by the party entitled to grant such waiver, or such other date as mutually agreed upon by the parties.

Section 3.2 Deliveries by Selling Group Members and Parent at Closing.

(a) To effect the transfer referred to in Section 2.1 hereof, Selling Group or Parent, as the case may be, shall, on the Closing Date, deliver to Buying Group:

(i) a bill of sale and general assignment in substantially the form attached hereto as Exhibit 3.2(a)(i) (a "Bill of Sale");

(ii) assignments of leases in substantially the form attached hereto as Exhibit 3.2(a)(ii) transferring all of Selling Group's interest in the Assumed Leases listed on Schedule 4.9;

(iii) assignments of all of the Intellectual Property included in the Purchased Assets in the forms attached hereto as Exhibit 3.2(a)(iii);

(iv) all of Selling Group's books, records and files included in the Purchased Assets;

(v) the original Assumed Agreements (or copies to the extent originals are not in Selling Group's possession);

(vi) original certificates representing the ARC Securities, duly endorsed or accompanied by appropriate stock powers or other instruments of assignment with all necessary transfer stamps affixed or accompanied by funds sufficient for the purchase of such tax stamps;

(vii) original title certificates to vehicles, duly endorsed, which are included in the Purchased Assets;

(viii) such lien releases and UCC-termination statements or payoff letters providing for the delivery of such documents as may be necessary to permit the conveyance of the Purchased Assets free and clear of all Liens (other than Permitted Liens) as contemplated hereunder;

(ix) a certificate of the chief financial officer of Selling Group listing by specific patient or payor the credit balances of each such patient or payor to be reflected on the Closing Balance Sheet and in the Net Accounts Receivable as of the Closing Date;

(x) such agreements, certificates, and other documents and instruments referred to in Article VII hereof; and

(xi) all such other instruments and agreements (including the Related Agreements to which any Selling Group Member is a party) as reasonably shall be requested by Buying Group to vest in Buying Group title in and to the Purchased Assets in accordance with the provisions hereof.

All instruments to be delivered to Buying Group pursuant hereto shall be in form and substance, and shall be executed in a manner, reasonably satisfactory to Buying Group, sufficient to vest all right, title and interest of Selling Group in the Purchased Assets in Buying Group and, where appropriate, sufficient to be recorded or filed, but shall not function to increase or decrease the assets being transferred to Buying Group hereunder or the liabilities and obligations to be assumed by Buying Group hereunder.

(b) Simultaneously with the delivery of items referenced in paragraph (a) above, Selling Group shall take all steps as may be required to put Buying Group in actual possession and operating control of the Purchased Assets, free of all tenants and occupants other than as contemplated by this Agreement or the Related Agreements.

(c) Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an assignment of any right, title or interest in, to or under any Assumed Agreements or permits or any claim or right of any benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the consent of a third party, would constitute a breach thereof or in any way adversely affect the rights of the Buying Group or Selling Group thereunder, unless any such required consent or waiver has been obtained and is in full force and effect. Parent shall use its reasonable commercial efforts to obtain (provided neither Parent nor any Selling Group Member shall be obligated to make any payments or incur any liabilities in connection therewith), and ProCare agrees to cooperate with Parent in its efforts to obtain (including, without limitation, the submission of reasonable financial and other information concerning ProCare and the Buying Group and the execution and delivery of any assumption agreements or similar documents reasonably requested by a third party, provided that such assumption agreement or similar document does not enlarge or expand the liabilities and obligations to be paid, observed or performed in respect of such Assumed Agreement or permit), the consent of or waiver by any such third party (other than from third parties to agreements relating to indebtedness for borrowed money) to the assignment or transfer thereof to the Buying Group in all cases in which such consent or waiver is required for assignment or transfer. To the extent that the consents and waivers referred to herein are not obtained by Parent, or until the impracticalities of transfer thereof are resolved to ProCare's reasonable satisfaction, Parent shall use reasonable commercial efforts (x) to provide to the Buying Group the benefits of any Assumed Agreement or permit intended to be included in the Purchased Assets, (y) to cooperate in any arrangement, reasonable and lawful as to Parent and ProCare, designed to provide such benefits to Buying Group and (z) at ProCare's request, to enforce for the account and at the expense of ProCare any rights of the Selling Group arising from the Assumed Agreements and permits intended to be included among the Purchased Assets, including the right to elect to terminate or not renew in accordance with the terms thereof on the advice of ProCare, which termination shall, upon becoming effective, relieve Parent of any further obligation under this Section with respect to such Assumed Agreement or permit, and (ii) after the Closing, ProCare shall use reasonable commercial efforts to perform the obligations of the Selling Group arising under such Assumed Agreements and permits, to the extent ProCare receives the benefit thereof pursuant to this Section 3.2(c). Parent and ProCare shall cooperate with each other to take such actions, including entering into services agreements or similar arrangements, as are reasonably calculated to effectuate the intent of the preceding sentence. The Purchase Price shall not be reduced or increased by reason of the non-assignability or subcontracting of any of the Assumed Agreements. Nothing contained herein shall be deemed to waive or excuse any obligation on the part of a Selling Group Member or any condition for the benefit of Buying Group to obtain any necessary consents to the transfer or assignment of any of the Assumed Agreements or other Purchased Assets required to be transferred or assigned hereunder.

(d) Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement by Selling Group to transfer to Buying Group any of the Excluded Property.

### Section 3.3 Deliveries by Buying Group at Closing.

(a) To effect the purchase and assumption referred to in Sections 2.1 and 2.2 hereof, on the Closing Date, Buying Group shall deliver to Selling Group:

(i) the Base Purchase Price in accordance with Section 2.4(a);

(ii) an agreement of assumption in substantially the form attached hereto as Exhibit 3.3 (an "Assumption Agreement") evidencing Buying Group's assumption of the Assumed Liabilities; and

(iii) such agreements, certificates and other documents and instruments referred to in Article VIII hereof

All instruments to be delivered to Selling Group pursuant hereto shall be in form and substance, and shall be executed in a manner, reasonably satisfactory to each Selling Group Member, but shall not function to increase or decrease the assets being transferred to Buying Group hereunder or the liabilities and obligations to be assumed by Buying Group hereunder.

Section 3.4 Inventory. A physical inventory count (the "Physical Inventory") of the Business shall be taken (at Buying Group's expense) by a mutually agreed firm on the day preceding the Closing Date, at which inventory count Buying Group's Accountants and Selling Group's Accountants shall be entitled to observe. The value of the inventory at the Physical Inventory shall be determined in accordance with the methods and cost factors listed on Schedule 3.4 hereto.

Section 3.5 Change of Name. On the Closing Date, each Selling Group Member shall deliver to Buying Group all such executed documents as may be required to change each Selling Group Member's name on that date to another name reasonably acceptable to Buying Group which bears no similarity to "Stadtlanders" or any confusingly similar name, including but not limited to a name change amendment to be filed with the appropriate secretary of state in the applicable jurisdictions. Each Selling Group Member hereby appoints Buying Group as its attorney-in-fact to file all such documents at or after the Closing. Buying Group hereby grants to each Selling Group Member a royalty-free, fully-paid, non-exclusive license to use the tradename "Stadtlanders" for the six-month period immediately following the Closing, solely in connection with the Corrections Division Business. In addition, each Selling Group Member agrees that upon expiration of the six-month period immediately following the Closing, it will cease forever any and all use of the name "StadtRelease" and any confusingly similar name, for any purpose.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES BY EACH SELLING GROUP MEMBER AND PARENT

In order to induce Buying Group to enter into this Agreement and purchase the Purchased Assets, each Selling Group Member and Parent hereby jointly and severally represent and warrant to each Buying Group Member as set forth in this Article IV.

##### Section 4.1 Existence and Qualification.

(a) Parent (i) is a corporation, duly incorporated, validly existing and in good standing under the laws of its state of formation, and (ii) has all corporate power and authority and all governmental licenses, permits, authorizations, consents and approvals to own and lease its properties and assets and to carry on its business as presently conducted.

(b) Each Selling Group Member: (i) is a limited liability company or limited partnership, duly organized, validly existing and in good standing under the laws of its state of formation, (ii) has all limited liability company or partnership power and authority and all governmental licenses, permits, authorizations, consents and approvals to own and lease its properties and assets and to carry on the Business as presently conducted, and (iii) is qualified as a foreign entity to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or where the ownership

or leasing of its properties or assets requires such qualification, except for such jurisdictions where the failure to be so qualified or to have such licenses, permits, authorizations, consents or approvals would not have a Material Adverse Effect. The jurisdictions in which each Selling Group Member is qualified to do business are set forth on Schedule 4.1 hereto.

#### Section 4.2 Ownership of Selling Group Members; Interests in Other Entities.

(a) BBC Operating Sub, Inc. and Bergen Brunswick Drug Company are the sole members of OPCO; BBC Licensing Sub, Inc. is the sole member of Licensing Company; OPCO and Bergen Brunswick Drug Company are the sole partners of each other Selling Group Member, and no other Person owns any equity interest (or any interest convertible or exchangeable into such an equity interest) in OPCO, Licensing Company or any other Selling Group Member.

(b) The following information for each Selling Group Member is set forth in Schedule 4.2(b) hereto, as applicable: (i) its name and jurisdiction of incorporation or formation; and (ii) the number of issued and outstanding shares of capital stock or share capital or other equity interest, the record owner(s) thereof and the number of issued and outstanding shares of capital stock or share capital or other equity interest beneficially owned, directly or indirectly, by Parent, Parent's subsidiaries or a Selling Group Member.

(c) Except as set forth in Schedule 4.2(c) hereto, no Selling Group Member owns, directly or indirectly, beneficially or of record, any stock, partnership interest, option, warrant or other equity interest in any Person.

(d) Except as set forth on Schedule 4.2(d) hereto, no Selling Group Member is subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any other Person.

#### Section 4.3. Authorization; Enforceability.

(a) Parent has full corporate power and authority to enter into this Agreement and the Related Agreements to be executed by it, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder (other than approvals required by the HSR Act). The execution, delivery and performance of this Agreement and the Related Agreements to be executed by Parent and the consummation by Parent and each Selling Group Member of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Parent. This Agreement and the Related Agreements have been or will be duly executed and delivered by Parent and constitutes or will constitute the valid and binding obligation of Parent, enforceable against Parent in accordance with their respective terms.

(b) Each Selling Group Member has full limited liability company or partnership power and authority to enter into this Agreement and the Related Agreements to be executed by it, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the Related Agreements to be executed by each Selling Group Member and the consummation by each Selling Group Member of the transactions contemplated hereby and thereby have been duly authorized by all requisite member, manager and partner action on the part of each Selling Group Member. This Agreement and the Related Agreements have been or will be duly executed and delivered by each Selling Group Member and constitute or will constitute valid and binding obligations of each Selling Group Member, enforceable against each Selling Group Member in accordance with their respective terms.

#### Section 4.4 No Breach or Violation.

(a) Except as set forth on Schedule 4.4(a) hereto, Parent's execution and delivery of this Agreement and the Related Agreements, its compliance with and fulfillment of the terms of this Agreement and such Related Agreements, and the consummation of the other transactions contemplated hereby and by any of the Related Agreements, do not and will not, with notice or passage of time or both, after giving effect to consents described on Schedule 7.8 attached hereto which shall be obtained prior to the Closing: (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Lien upon any of Parent's assets pursuant to, (iv) give any Person the right to accelerate any obligation under, or (v) result in a violation of, (a) any Law applicable to Parent, (b) Parent's certificate of incorporation or by-laws, (c) any material franchise, permit, license, authorization, concession, order, judgment, writ, injunction or decree to which Parent is subject, or by which any of its assets, properties or rights are bound, or (d) any material lease, mortgage, indenture, deed of trust, trust agreement, note agreement or other agreement, contract, understanding or instrument to which Parent is subject, or by which any of its assets, properties or rights are bound.

(b) Except as set forth on Schedule 4.4(b) hereto, each Selling Group Member's execution and delivery of this Agreement and the Related Agreements, its compliance with and fulfillment of the terms of this Agreement and such Related Agreements, the sale and delivery of the Purchased Assets to the Buying Group and the assumption of the Assumed Liabilities by the Buying Group, and the consummation of the other transactions contemplated hereby and by any of the Related Agreements, do not and will not, with notice or passage of time or both, after giving effect to consents described on Schedule 7.8 attached hereto which shall be obtained prior to the Closing: (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Lien upon the Purchased Assets pursuant to, (iv) give any Person the right to accelerate any obligation under, or (v) result in a violation of, (a) any Law applicable to such Selling Group Member, (b) certificate of formation, operating agreement or partnership agreement, (c) any material franchise, permit, license, authorization, concession, order, judgment, writ, injunction or decree to which a Selling Group Member is subject, or by which any of their respective assets, properties or rights are bound, or (d) any material lease, mortgage, indenture, deed of trust, trust agreement, note agreement or other agreement, contract, understanding or instrument to which a Selling Group Member is subject, or by which any of their respective assets, properties or rights are bound.

Section 4.5 Consents and Approvals. Except as set forth on Schedule 4.5 hereto, no material consent, approval, exemption, audit, waiver, order or authorization of, or registration, qualification, designation, declaration, notice or filing with, any governmental or regulatory authority (foreign or domestic), or any other Person, is required in connection with the execution, delivery and performance of this Agreement and the Related Agreements or the sale or delivery of the Purchased Assets or the assumption of the Assumed Liabilities, or the other transactions contemplated by this Agreement and any of the Related Agreements. There are no existing agreements, options, commitments or rights with, of or to any Person to acquire any Selling Group Member's assets, properties or rights included in the Purchased Assets or any interest therein, except for those Contracts for the sale of inventory entered into by a Selling Group Member in the ordinary course of business.

#### Section 4.6 Financial Statements; Rx Audit Information.

(a) Attached hereto as Schedule 4.6(a) are true and complete copies of (i) the unaudited consolidated balance sheet of the Business (and the Corrections Division Business) at September 30, 1999, and the related statements of operation and cash flows for the fiscal year then ended, prepared by Selling Group and (ii) the unaudited consolidated balance sheet of the Business (and the Corrections Division Business) at March 31, 2000, and the related statements of operation and cash flows of the

Business (and the Corrections Division Business) for the six-month period then ended, prepared by Selling Group and (iii) the unaudited consolidated balance sheet of the Business (and the Corrections Division Business) at May 31, 2000 ((i), (ii), and (iii), collectively, "Historical Financial Statements").

(b) Except as set forth in detail on Schedule 4.6(b) hereto, Selling Group's Historical Financial Statements: (i) are complete and correct in all material respects, (ii) have been prepared in accordance with GAAP and consistent with past practices, and (iii) present fairly in all material respects the financial position of the Business at the dates indicated and the results of operations and cash flows of the Business for the periods indicated therein, subject to year-end audit adjustments which are solely of a normal, recurring and immaterial nature.

(c) Each Selling Group Member has made and kept books, records and accounts in reasonable detail, which accurately and fairly reflect in all material respects its activities and transactions and the purchase and disposition of any of its assets. Selling Group has not engaged in any material transaction with respect to the Business which is not reflected in such books, records and accounts.

(d) No unrecorded funds or assets of Selling Group have been established for any purpose; no accumulation or use of funds of Selling Group has been made without being properly accounted for in the respective books and records of Selling Group; all payments by or on behalf of Selling Group have been duly and properly recorded and accounted for in Selling Group's books and records; no false or artificial entry has been made in the books and records of Selling Group for any reason; no payment has been made by or on behalf of Selling Group with the understanding that any part of such payment is to be used for any purpose other than that described in the documents supporting such payment; and Selling Group has not made, directly or indirectly, any illegal contributions to any political party or candidate, either domestic or foreign, or any contribution, gift, bribe, rebate, payoff, influence payment or kickback, whether in cash, property or services, to any individual, corporation, partnership or other entity, to secure business or to pay for business secured.

(e) All books, records, and other information provided by each Selling Group Member in connection with the calculation of the Daily Rx Average for April and May 2000 are accurate and complete and, with respect to the calculation of the Daily Rx Average for the sixty (60) day period ending on the day preceding the Closing Date, will be accurate and complete when provided.

Section 4.7 Inventory. All inventory of Selling Group used or useful in the conduct of the Business reflected on Selling Group's Historical Financial Statements or acquired since May 31, 2000 was acquired and has been maintained by each Selling Group Member in the ordinary course of business; is of good and merchantable quality; consists substantially of a quality, quantity and condition usable, or saleable within six (6) months in the ordinary course of business; is valued at the lower of cost or market on a weighted average basis and otherwise in accordance with GAAP and consistent with past practices; and is not subject to any material write-down or write-off for which appropriate reserves have not been included in the Historical Financial Statements and for which appropriate reserves will not be included in the Closing Balance Sheet. Except as described on Schedule 4.7 hereto, no Selling Group Member is under any liability or obligation with respect to the return of inventory of a Selling Group Member in the possession of its customers. Except as listed and described on Schedule 4.7 hereto, no Selling Group Member has any obsolete or slow-moving inventory (i.e., inventory which, based upon the historical sales rate of such items by Selling Group could not reasonably be expected to be sold within six (6) months) or inventory which is not fit for the purpose for which it is intended to be used. Since May 31, 2000, no inventory item of any Selling Group Member has been sold or disposed of except in the ordinary course of business.

Section 4.8 Accounts Receivable and Bad Debts. The accounts receivable of Selling Group arising from the conduct of the Business as reflected on Selling Group's Historical Financial Statements or arising since May 31, 2000, are valid and genuine; have arisen solely out of bona fide sales of goods

delivered to and accepted by the customers of Selling Group, or the performance of services or other business transactions of Selling Group in the ordinary course of business; and except as reflected in the reserves therefor, are not subject to valid defenses, set-offs or counterclaims. The allowance for collection losses on the Historical Financial Statements has been, and on the Closing Balance Sheet will be, determined in accordance with GAAP and consistent with past practices. The accounts receivable of the Selling Group pertaining to the Business reflected on the May 31, 2000 Agreed Balance Sheet and to be reflected on the Closing Balance Sheet are reasonably expected to be collected at the full recorded amount thereof, less the recorded allowance for collection losses thereon. Set forth on Schedule 4.8 hereto is a true, complete and accurate list as of May 31, 2000 of: (i) the current accounts receivable of each Selling Group Member, those which have not been paid within 30 days of the date of billing and those which have not been paid within 60 days and 90 days of the date of billing and (ii) with respect to obligations owed to each Selling Group Member which have been classified as bad debts, the name of each debtor and the total amount due from each such debtor. Such Schedule 4.8 shall be updated at the Closing.

Section 4.9 Material Contracts and Obligations. Attached hereto as Schedule 4.9 is a true, complete and accurate, categorized by subject matter, together with an indication by an asterisk (\*) if the same shall constitute an Assumed Agreement, of all of the following contracts, agreements, plans, leases and commitments, whether written or oral, entered into by a Selling Group Member or by which a Selling Group Member is bound ("Contracts"):

(i) all purchase orders and Contracts for the purchase of goods or supplies which are for a term of more than three (3) months, or which involve or are reasonably expected to involve aggregate payments by a Selling Group Member of more than \$50,000 during any fiscal year of such Selling Group Member, or which were entered into other than in the ordinary course of business;

(ii) all sales agreements and other sales orders (including sales by any Selling Group Member to any governmental authority) and Contracts for the sale of goods or provision of services which are for a term of more than three (3) months, or which involve or are reasonably expected to involve aggregate payments to a Selling Group Member of more than \$50,000 during any fiscal year of such Selling Group Member, or which were entered into other than in the ordinary course of business;

(iii) all Contracts with any officer, director, consultant or employee of the Business (the "Existing Employment Contracts") or any management contract;

(iv) all Contracts or arrangements providing for the grant of equity interests, equity appreciation rights, bonuses, pensions, severance payments, deferred or incentive compensation, retirement payments, profit-sharing, insurance or other benefit plan or program for any employees;

(v) all Contracts for construction or for the purchase of real estate, improvements, equipment, and other items which under GAAP constitute capital expenditures or which involve or are reasonably expected to involve expenditures in the aggregate in excess of \$50,000 during any fiscal year;

(vi) all Contracts relating to the rental or use of equipment, vehicles, other personal property or fixtures, or relating to the provision of services, which involve or are reasonably expected to involve payment of rentals or sums in the aggregate in excess of \$50,000 during any fiscal year;

(vii) all Contracts relating in any way to direct or indirect indebtedness for borrowed money or evidenced by a bond, debenture, note or other evidence of indebtedness (whether secured or unsecured) of or to a Selling Group Member, including but not limited to, indebtedness by way of lease or installment purchase arrangement, guarantee, reimbursement obligations pertaining to letters of credit, repurchase agreements, purchase price discount obligations, other intercompany account

agreements, or other undertakings on which others rely in extending credit, or otherwise, and all mortgages, pledges, conditional sales contracts, chattel and purchase money mortgages and other security arrangements with respect to any real estate, improvements, equipment, other personal property or fixtures in excess of \$50,000;

(viii) all Contracts substantially limiting the freedom of a Selling Group Member to engage in or to compete in any line of business of a Selling Group Member, or with any Person or in any geographical area in connection therewith, or to use or disclose any information relating to a Selling Group Member in its possession;

(ix) all license agreements, either as licensor or licensee, franchise agreements, either as franchisor or franchisee, and agreements pertaining to any website for the Business, including all linking and hosting agreements;

(x) all joint venture Contracts, whether or not involving a sharing of profits;

(xi) all Contracts between a Selling Group Member and any member, partner or any Affiliate of a Selling Group Member or Parent;

(xii) all Contracts with HMO organizations, insurance companies, third party administrators or payors, pharmacy providers, state and local governments, pharmaceutical manufacturers, and clinics and foundations with respect to the Business;

(xiii) all Contracts involving purchase price discounts in excess of \$50,000 in any fiscal year of a Selling Group Member offered by a Selling Group Member based on purchase volume;

(xiv) all Contracts which are presently expected to result in any loss upon completion or performance thereof;

(xv) all Contracts involving research and development efforts on behalf of a Selling Group Member;

(xvi) all Contracts for any charitable or political contribution in excess of \$5,000;

(xvii) all Contracts not made in the ordinary course of business; and

(xviii) all other Contracts, except those which are (i) cancelable on 30 days or less notice without any penalty or other financial obligation or (ii) if not so cancelable, involve or are reasonably expected to involve aggregate payments by or to a Selling Group Member of \$50,000 or less during any fiscal year of a Selling Group Member.

Except as set forth on Schedule 4.9, all Contracts required to be disclosed to Buying Group pursuant to this Section 4.9 are valid, binding and in full force and effect and neither Selling Group Member, nor, to Selling Group's Knowledge, any other party thereto, is in breach or violation of, or default under, nor, to Selling Group's Knowledge, is there any valid basis for such a claim of breach or violation of, or default under, the terms of any such Contract, and no event has occurred which constitutes or, with the lapse of time or the giving of notice or both, would constitute, such a breach, violation or default by a Selling Group Member thereunder. Each Selling Group Member has enforced, or attempted to enforce, all material rights in favor of Selling Group with respect to the Contracts described in Schedule 4.9.

Section 4.10 Obligations with Material Adverse Effect. To Selling Group's Knowledge, there is no term or provision of any Contract required to be disclosed to Buying Group pursuant to Section 4.9,

nor any franchise, permit, license, concession or other authorization to conduct the Business to which a Selling Group Member is a party or by which it or any of their respective properties or assets are bound, nor any provision of any Law, or any judgment, writ, injunction, decree or order applicable to or binding upon a Selling Group Member, which is reasonably expected to have a Material Adverse Effect.

Section 4.11 Employees. Each Selling Group Member has complied in all material respects with all applicable Laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining, age, pregnancy, disability, sex, race, national origin and other forms of unlawful discrimination and the payment and withholding of social security and other Taxes due in respect thereof. Set forth in Schedule 4.11 hereto is a list of the names and titles of and current annual base salary or hourly rates for all employees of each Selling Group Member, together with a statement of the full amount and nature of any bonuses and other compensation paid or payable to or accrued for each such employee during the two preceding fiscal years of each Selling Group Member and the vacation to which each such employee is entitled.

Section 4.12 Absence of Certain Developments. Except as set forth on Schedule 4.12 hereto, since May 31, 2000, no Selling Group Member has:

(a) incurred any liabilities, other than liabilities incurred in the ordinary course of business, or discharged or satisfied any lien or encumbrance or paid any liabilities, other than in the ordinary course of business, or failed to pay or discharge when due any liabilities of which the failure to pay or discharge has caused or would reasonably be expected to cause any material damage or risk of material loss to the Business or any of its assets or properties;

(b) sold, assigned or transferred any assets or properties which would have been included in the Purchased Assets if the Closing had been held on May 31, 2000 or on any date since then, except for the sale of inventory in the ordinary course of business and for the disposition of assets in the ordinary course of business which are worn-out, in need of substantial repair, or are obsolete and which do not have a market value in excess of \$50,000 in the aggregate for all such assets;

(c) created, incurred, assumed or guaranteed any indebtedness for borrowed money, or mortgaged, pledged or subjected any of its assets to any mortgage, lien, pledge, security interest, conditional sales contract or other encumbrance of any nature whatsoever in an aggregate amount exceeding \$50,000 or other than in the ordinary course of business;

(d) made or suffered any material amendment or termination of any Contract to which it is a party or by which it is bound, or canceled, modified or waived any material debts or claims held by it or waived any rights of material value, whether or not in the ordinary course of business;

(e) suffered any damage, destruction or loss, whether or not covered by insurance, of any item or items carried on its books of account individually or in the aggregate at more than \$50,000 or suffered any repeated, recurring or prolonged shortage, cessation or interruption of supplies or utilities or other services required to conduct the operations of the Business;

(f) suffered any Material Adverse Effect;

(g) received notice or obtained knowledge of any actual or threatened labor trouble, strike, union organizing efforts, or other occurrence, event or condition of any similar character;

(h) made any acquisition of substantial assets or any commitments or agreements for capital expenditures or capital additions or betterments exceeding \$50,000 individually or in the aggregate, except such as may be involved in ordinary repair, maintenance or replacement of assets in the ordinary course of business;

(i) other than in the ordinary course of business consistent with past practices, increased the salaries or other compensation of, or made any advance (excluding advances for ordinary and necessary business expenses) or loan to, any of their respective employees or made any increase in, or any addition to, other benefits to which any of their respective employees may be entitled;

(j) changed any of its accounting principles or the methods of applying any such principles or any practice involving customer credit terms or collection or payment of accounts;

(k) entered into or amended any Contract with any of their respective Affiliates;

(l) made any distributions to the Parent; or

(m) entered into any transaction other than in the ordinary course of business.

**Section 4.13 Undisclosed Liabilities.** To Selling Group's Knowledge, no Selling Group Member has any liabilities or obligations, whether accrued, absolute, contingent or otherwise, due or to become due, or whether direct or indirect, arising out of any action or inaction, or with respect to or based upon transactions or events occurring, or any state of facts or condition existing, in connection with such Selling Group Member's conduct of the Business, and, to each Selling Group's Knowledge, there is no basis for any claim against any Selling Group Member for any such liability or obligation, except: (i) to the extent specifically described in this Agreement or disclosed in the Schedules hereto, (ii) to the extent fully reflected or reserved against on the Historical Financial Statements, (iii) liabilities and obligations arising or incurred in the ordinary course of business under any Contract disclosed on Schedule 4.9 or not required to be disclosed because of the term or amount involved, and (iv) liabilities or obligations arising or incurred in the ordinary course of business since May 31, 2000 and which will have been paid or discharged as of the Closing Date or which will be appropriately reflected or reserved against on the Closing Balance Sheet if and to the extent required by GAAP.

**Section 4.14 Tax Matters.** (a) All income and franchise tax returns with respect to the Purchased Assets that are required to be filed on or prior to Closing Date have been duly filed on a timely basis and all taxes thereon have been timely paid; (b) all income and franchise tax returns with respect to the Purchased Assets for periods ending on or before the Closing Date but that are not required to be filed until after the Closing Date will be timely filed and all income and franchise taxes reflected thereon will be timely paid; (c) none of the Purchased Assets is subject to any Lien (other than a Permitted Lien) for payment of any unpaid Taxes or levy proceedings; (d) all income and franchise taxes which any Selling Group Member is (or was) required by Law to withhold or collect have been duly withheld or collected, and have been timely paid over to the proper taxing authorities to the extent due and payable; (e) no Selling Group Member is a party to any agreement that would require it to make any payment that would constitute an "excess parachute payment" for purposes of Sections 280G and 4999 of the Code; (f) no Selling Group Member is a "foreign person" as such term is defined in the Code; (g) no Selling Group Member has any express or implied obligation (including, but not limited to, an indemnification obligation) with respect to the payment of Taxes for any party other than a Selling Group Member; and (h) no Selling Group Member has received any notice of any additional assessments with respect to the Taxes of that Selling Group Member since the date of any Tax Return of that Selling Group Member nor has any Selling Group Member received any notice of any audit or review of any Tax Return that includes that Selling Group Member.

**Section 4.15 Real Property Owned and Leased.** No Selling Group Member owns any real property and the real property leased by each Selling Group Member related to the Business has never been owned by a Selling Group Member. Set forth on Schedule 4.15 are true and accurate listings of all real property leases to which a Selling Group Member is a party setting forth: (i) the name of the Selling Group Member that is the lessee; (ii) the name of the lessor, (iii) a description of the property leased, and (iv) whether such premises are currently being used for the operation of the Business. Except as

set forth on Schedule 4.15: (i) all of the leases set forth on such Schedule are in full force and effect and are valid, binding and enforceable in accordance with their respective terms, (ii) all accrued and currently payable rents and other payments required by such leases have been paid, (iii) each Selling Group Member and, to each Selling Group's Knowledge, each other party thereto has complied with all respective covenants and provisions of such leases in all material respects, (iv) neither Selling Group Member nor, to Selling Group's Knowledge, any other party is in default in any material respect under any such leases, (v) no party has asserted any defense, set off, or counter claim thereunder, (vi) no waiver, indulgence or postponement of any obligations thereunder has been granted by any party, and (vii) the validity or enforceability of any such lease will be in no way affected by the sale of the Purchased Assets to Buying Group, provided all required consents have been obtained from the other parties to such lease.

Section 4.16 Title to Purchased Assets; Condition of Assets; Necessary Property.

(a) Set forth on Schedule 4.16(a) are true, correct, and complete listings of all Liens on the Purchased Assets. Each Selling Group Member has, and will convey to Buying Group at Closing, good title to the Purchased Assets, free and clear of all Liens other than Permitted Liens. The tangible property included among the Purchased Assets is in good working order and repair, reasonable wear and tear excepted, have been maintained and repaired on a regular basis so as to preserve their utility and value, are usable in the ordinary course of business, and conform in all material respects to all applicable Laws relating to their construction, use and operation.

(b) Schedule 4.16(b) sets forth a list of all assets which are owned by or licensed to a Selling Group Member, Parent, or their respective Affiliates and which are used in the Business and in any other business of Parent or an Affiliate of Parent (including the Corrections Division Business). None of the joint use assets set forth on Schedule 1(f) are used principally in the Business. No Person other than Selling Group owns, leases or has any rights in any Purchased Assets. The Purchased Assets, including the Assumed Agreements, constitute all of the real and personal property, whether tangible or intangible, owned, leased, or licensed (other than Excluded Property), which is necessary in the conduct of the Business in the manner and to the extent presently conducted by Selling Group. No other real or personal property, whether tangible or intangible, owned, leased, or licensed, is required for the conduct of the Business in the manner and to the extent presently conducted by Selling Group.

Section 4.17 Proprietary Rights. The Purchased Assets include all patents, trademarks, tradenames, domain names, world wide web or Internet sites (including without limitation "Stadtlander.com" and "Stadtassist.com"), service marks, logos, copyrights, including, in each case, applications for registrations therefor, inventions, and all other proprietary rights (all such items being hereinafter referred to as "Intellectual Property") presently used or held for use in the conduct of the Business. Each Selling Group Member owns or possesses adequate licenses or other rights to use its Intellectual Property. Except as otherwise set forth on Schedule 4.17 hereto, no royalties or fees are payable by any Selling Group Member to any Person by reason of the ownership or use of any of the Intellectual Property. Except as set forth on Schedule 4.17, each Selling Group Member has the sole and exclusive right to use its Intellectual Property and, to the Selling Group's Knowledge, there are no licenses, sublicenses or agreements relating to the use by any other Person of any of Selling Group's Intellectual Property now in effect, and to Selling Group's Knowledge there is no infringement upon the Intellectual Property by any other Person. No charge or claim is pending or, to Selling Group's Knowledge, threatened, nor has any charge or claim been made within the past two years to the effect that, nor to Selling Group's Knowledge, does, the operation of the Business, sale of any of their respective products or any formula, method, process, or material employed in connection therewith, infringe upon or conflict in any way with any rights or properties of the type enumerated above owned or held by any other Person. All patents, patent registration applications, registered trademarks, trademark registration applications, trade names, registered service marks, service mark registration applications,

logos, licenses and registered copyrights, copyright registration applications and domain names owned by a Selling Group Member are set forth on Schedule 4.17 and have been duly registered in, filed in, or issued by the United States Patent and Trademark Office, United States Register of Copyrights, Network Solutions, Inc. (or other authorized domain name registry) or the corresponding offices of any other country, state, or other jurisdiction to the extent set forth on Schedule 4.17, and have been properly maintained or renewed in accordance with all applicable provisions of Law and administrative regulations in the United States and in each such other country, state, or other jurisdiction. Schedule 4.17 accurately sets forth with respect to each patent, patent registration application, registered trademark, trademark registration application, trade name, service mark, service mark registration application, logo, license, copyright and copyright registration application owned by or licensed to each Selling Group Member: (i) the owner thereof, (ii) the date of expiration, if any, for owned Intellectual Property, (iii) whether such ownership or licensing rights are exclusive, and (iv) to Selling Group's Knowledge, any other licensee of such rights. Except as set forth on Schedule 4.17, no present or former employee of any Selling Group Member and to Selling Group's Knowledge, no other Person owns or has any proprietary, financial or other interest, direct or indirect, in whole or in part, in any Intellectual Property which Selling Group owns or uses in the conduct of the Business as now or heretofore conducted.

Section 4.18 Necessary Licenses and Permits. Each Selling Group Member possesses all licenses, permits, consents, concessions and other authorizations of governmental, regulatory or administrative agencies or authorities, whether foreign, federal, state, or local, required to own and lease the Purchased Assets, to sell and/or service any inventory of Selling Group or to otherwise conduct the Business as presently conducted and as proposed to be conducted by Selling Group. Schedule 4.18 hereto sets forth a list of each such license, permit, consent, concession or other authorization so required. Except as specified in Schedule 4.18, no registrations, filings, applications, notices, transfers, consents, approvals, audits, qualifications, waivers or other action of any kind are required by virtue of the execution and delivery of this Agreement, the Related Agreements, or of the consummation of the transactions contemplated hereby or thereby: (a) to avoid the loss or termination of any such license, permit, consent, concession or other authorization described on Schedule 4.18 or any asset, property or right used or useful pursuant to the terms thereof, or to avoid the violation or breach of any Law applicable thereto or (b) to enable Buying Group to acquire, hold and enjoy the same after the Closing Date. All such licenses, permits, consents, concessions and other authorizations are renewable by Buying Group pursuant to their terms or in the ordinary course of business.

#### Section 4.19 Environmental.

(a) At all times prior to the Closing, each Selling Group Member has complied and at the Closing will be in compliance, in all material respects, with all Environmental Laws, and no Selling Group Member has received any notice, report, or information (including information that any litigation, investigation or administrative or other proceedings of any kind are pending or threatened) regarding any liabilities (whether accrued, absolute, contingent, unliquidated, or otherwise), or any corrective, investigatory, or remedial obligations, arising under Environmental Laws. For the purposes of this Agreement, "Environmental Laws" means all present governmental requirements relating to the discharge or release of air pollutants, water pollutants, process waste water, petroleum products or hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Occupational Safety and Health Act of 1970, as amended, the Federal Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Toxic Substances Control Act, as amended, the Federal Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act, as amended, and any and all other comparable state or local laws relating to public health and safety or work health and safety.

(b) No Hazardous Substances have been, or are currently, located at, in, or under or emanating from either the Purchased Assets or any other property currently or previously owned or operated by a Selling Group Member in a manner which: (i) violates any applicable Environmental Laws, or (ii) requires response, remedial, corrective action or cleanup of any kind under any applicable Environmental Law, the cost of which would be material. For purposes of this Agreement, "Hazardous Substances" has the meaning set forth in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, in the Federal Resource Conservation and Recovery Act, as amended, and applicable state law and regulation, and shall also expressly include petroleum, crude oil and any fraction thereof.

Section 4.20 Corporate Documents, Books and Records. The books, records and accounts of each Selling Group Member accurately and fairly reflect in all material respects the transactions and the assets and liabilities of each Selling Group Member. No Selling Group Member has engaged in any transaction with respect to the Business, maintained any bank account for the Business, or used any of the funds of Selling Group in the conduct of the Business, except for transactions, bank accounts and funds which have been and are reflected in the normally maintained books and records of Selling Group.

Section 4.21 Compliance with Law. Except as may be set forth in Schedule 4.21 or 4.31 hereto, no Selling Group Member is in default under, or in violation of, nor has such Selling Group Member violated (and not cured) any Law (including, without limitation, Laws relating to the issuance or sale of securities, anti-trust, restraint of trade, or occupational safety, or any Law or any activities which are prohibited under federal Medicare and Medicaid statutes (including 42 U.S.C. § 1320a-7, 1320a-7a, and 1320a-7b), the Federal False Claims Act (31 U.S.C. § 3729 et seq.), statutes regarding physician self-referrals (42 U.S.C. § 1395nn and 1396b(s)), and the Federal Controlled Substances Act (21 U.S.C. § 801 et seq.), or the regulations promulgated pursuant to such statutes or related federal, state or local statutes or regulations), or any licenses, franchises, permits, authorizations or concessions granted by, or any judgment, decree, writ, injunction or order of, any governmental or regulatory authority, applicable to such Selling Group Member or any of the Purchased Assets. Except as disclosed on Schedule 4.21 or 4.31, no investigation or review by any governmental authority with respect to any Selling Group Member (or any of their respective predecessors) is pending or, to the Selling Group's Knowledge, threatened, nor to the Selling Group's Knowledge, has any Governmental Authority indicated in writing an intention to conduct the same, other than those the outcome of which would not reasonably be expected to result in a Material Adverse Change.

Section 4.22 Litigation. Except as set forth in Schedule 4.22 hereto, there is no suit, claim, action, proceeding or investigation pending or, to Selling Group's Knowledge, threatened against or affecting a Selling Group Member, or in connection with any of the Purchased Assets, or the consummation of the transactions contemplated hereby, at law or in equity or before any Governmental Authority or instrumentality or before any arbitrator of any kind. Except as set forth on Schedule 4.22, no Selling Group Member has been a party to any such suit, claim, action, proceeding or investigation during the past two years, and to Selling Group's Knowledge, no such suit, claim, action, proceeding or investigation has been threatened. No pending or threatened suit, claim, action, proceeding or investigation is reasonably expected to have a Material Adverse Effect on Selling Group or their relations with their respective customers, dealers, distributors, suppliers or employees. No Selling Group Member is a party or subject to any judgment, order, writ, injunction or decree applicable to the Business or the Purchased Assets.

Section 4.23 Indebtedness to and from Officers, Managers, Partners and Others. Except as set forth on Schedule 4.23 hereto, no Selling Group Member is indebted to Parent, any director, officer, member, manager, partner, employee or agent of any Selling Group Member or any Affiliate of such Selling Group Member or Parent, except for amounts due as normal salaries, wages, or reimbursement

of ordinary business expenses, and no Parent, director, officer, member, manager, partner, employee or agent of any Selling Group Member, any Affiliate or Parent, is indebted to a Selling Group Member.

Section 4.24 Labor Agreements and Employee Relations. Except as set forth on Schedule 4.24, no Selling Group Member is a party to any collective bargaining or similar agreement covering any of their respective employees. Except as set forth on Schedule 4.24, no labor organization or group of employees of any Selling Group Member has made a demand for recognition, has filed a petition seeking a representation proceeding or given a Selling Group Member notice of any intention to hold an election of a collective bargaining representative. No Selling Group Member has suffered any strike, slowdown, picketing or work stoppage by any group of employees affecting the Business during the past five years.

Section 4.25 Brokers' Fees. Except for the broker fee payable to the Persons set forth on Schedule 4.25 hereto, no Selling Group Member nor any Person on such Selling Group Member's behalf has retained any broker, finder or agent or agreed to pay any brokerage fee, finder's fee or commission with respect to the transactions contemplated by this Agreement.

Section 4.26 Major Product Lines, Customers and Suppliers.

(a) Set forth on Schedule 4.26(a) is a list of each Selling Group Member's twenty-five (25) largest third party payors, together with a breakdown of the sales volume to each such payor, for fiscal years 1998 and 1999 and on a year-to-date basis for 2000. No Selling Group Member has received any written or oral communications from any such payor indicating its intention to materially reduce its purchases from such Selling Group Member, whether by reason of the consummation of the transactions contemplated by this Agreement or otherwise.

(b) Set forth on Schedule 4.26(b) hereto is a list of each Selling Group Member's twenty-five (25) largest suppliers based upon the dollar amount of purchases, together with a breakdown of the purchases from each such supplier, for fiscal year ended 1999 and on a year-to-date basis for 2000. No Selling Group Member has received any written or oral communication from any such supplier indicating the possibility of a material price increase on items purchased by such Selling Group Member, whether by reason of the consummation of the transactions contemplated by this Agreement or otherwise, other than in the ordinary course of business consistent with past practice. With regard to each Selling Group Member's vendors supplying key products or components in connection with the Business, no Selling Group Member has received any oral or written communication, nor has such person any reason to believe that it will receive any such communication, from any such vendor indicating an intention of such vendor to discontinue or diminish its relationship as a supplier to such Selling Group Member, whether by reason of the consummation of the transactions contemplated hereby or otherwise.

(c) Except as set forth on Schedule 4.26(c), no Selling Group Member is required to provide any bonding or other financial security arrangements in connection with any transactions with any of its distributors, other customers or suppliers.

Section 4.27 All Material Information. All material facts concerning Selling Group, the Business and the Purchased Assets have been disclosed to Buying Group and no representation or warranty made herein by a Selling Group Member, and no statement contained in any certificate or other instrument furnished or to be furnished to Buying Group in connection with the transactions contemplated by this Agreement, contains any untrue statement of a material fact or omits to state any material facts necessary in order to make any statement therein not misleading.

#### Section 4.28. Employee Benefit Plans and Arrangements.

Except as set forth on Schedule 4.28:

(a) No Selling Group Member maintains or contributes (or has an obligation to contribute) to: (i) any "employee benefit plan" (as defined in Section 3(3) of ERISA), whether a single employer, a multiple employer or a multiemployer plan, for the benefit of employees or former employees of such Selling Group Member, or (ii) any other plan, policy, program, practice or arrangement providing compensation or benefits under which any Selling Group Member has any obligation or liability to any employee or former employee of a Selling Group Member (or any dependent or other beneficiary thereof) including, without limitation, incentive, bonus, deferred compensation, vacation, holiday, medical, severance, disability, death, option, purchase or other similar benefit (individually, an "Employee Benefit Plan" and collectively, the "Employee Benefit Plans").

(b) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been so qualified and no event has occurred since the date of such determination that would adversely affect such qualification; each trust created under any such Employee Benefit Plan is exempt from tax under Section 501(a) of the Code and has been so exempt during the period from creation to date. Selling Group has provided Buying Group with access to the most recent determination letters from the Internal Revenue Service relating to such Employee Benefit Plans and such determination letter includes any new or modified requirements under the Tax Reform Act of 1986 and subsequent legislation enacted thereafter to the extent the remedial amendment period with respect to such legislation has expired.

(c) No Selling Group Member: (i) has within the past six years contributed to, or been under any obligation to contribute to, any multiemployer plan (as defined in Section 3(37) of ERISA) and (ii) is not liable, directly or indirectly, with respect to any such plan for a complete or partial withdrawal (within the meaning of Title IV of ERISA) or due to the termination or reorganization of such a plan or an employee benefit plan subject to the minimum funding requirements of ERISA.

(d) No Selling Group Member has ever maintained or contributed, or had an obligation to contribute, to a defined benefit plan subject to Title IV of ERISA or an employee benefit plan subject to the minimum funding requirements of the Code or ERISA.

(e) No Selling Group Member has engaged in any transaction that could subject any Selling Group Member to either a civil penalty assessed pursuant to Section 4.09 or Section 5.02(i) of ERISA or a Tax imposed pursuant to Sections 4975, 4976 or 4980(b) of the Code.

Section 4.29 Arms Length Transactions; Conflicts of Interest. Except as set forth on Schedule 4.29 hereto, all transactions by a Selling Group Member relating to the Business are and have been conducted on an arms length basis, and there is no transaction, and no transaction has been proposed, between a Selling Group Member and Parent, any officer and director, member or manager of any Selling Group Member or an Affiliate of any such Person. To Selling Group's Knowledge there is no favorable pricing, purchase or lease arrangements which will not continue to be available to Buying Group after the Closing on substantially equivalent terms. Except as disclosed in Schedule 4.29, no Parent, director, officer or employee of Selling Group or of any Affiliate of Selling Group or any such Person, has any interest in: (i) any property, real or personal, tangible or intangible, including, but not limited to, any Intellectual Property, used or useful in connection with or pertaining to the Business or (ii) any creditor, supplier, manufacturer, dealer, distributor or representative of a Selling Group Member.

Section 4.30 Insurance. Schedule 4.30 hereto contains a description of all policies of title, liability, fire, flood and other hazard, business interruption, worker's compensation and other forms of insurance (including bonds) insuring the products, properties, assets, employees of each Selling Group

Member relating to the Business. Except as set forth in Schedule 4.30, the coverage under all policies listed in Schedule 4.30 shall continue in full force and effect after the Closing Date with respect to occurrences prior to the Closing Date. Also set forth in Schedule 4.30 is a summary description of all claims made with respect to each Selling Group Member's workers' compensation insurance during each of the past three years.

Section 4.31 Medicare and Medicaid; Reimbursement by Payors; Related Legislation and Regulations.

(a) For each Selling Group Member, Schedule 4.31(a) contains a list of those jurisdictions in which each is licensed under Medicare or Medicaid. Except as set forth on Schedule 4.31(a), the Selling Group Members have not received any notice of investigation, evaluation, or suspension of any such licenses, permits, orders, approvals or authorizations. To the Selling Group's Knowledge, no suspension or cancellation of any such licenses, permits, orders, approvals and authorizations has been threatened or is contemplated.

(b) One or more of the Selling Group Members participate in Medicare and Medicaid Programs (the "Programs"). Schedule 4.31(b) contains a list of all Medicare and Medicaid provider numbers assigned to the Selling Group Members and other documents evidencing such participation.

(c) Except as set forth in Schedule 4.31(c), the Selling Group Members have not received notice of any offsets against future reimbursements under or pursuant to the Programs. To the Selling Group's Knowledge, no factual basis for any such offsets exist. Except as set forth in Schedule 4.31(c), there are no pending appeals, adjustments, challenges, audits, litigation and notices of intent to recoup past or present reimbursements with respect to the Programs. Except as set forth in Schedule 4.31(c), the Selling Group Members have not been subject to, or threatened with, loss or waiver of liability for utilization review denials with respect to the Programs during the past 12 months, nor have the Selling Group Members received notice of any pending, threatened or possible decertification, or audit, offset, other action or other loss of participation in any of the Programs. Except as set forth in Schedule 4.31(c), to the Selling Group's Knowledge, no validity review or program integrity review related to any of the Selling Group Members has been conducted by any Governmental Authority in connection with any of the Programs and no such review, audit or audit assessment is scheduled, pending or threatened against any of the Selling Group Members, their businesses or their assets.

(d) Except as set forth in Schedule 4.31(d), (i) the Selling Group Members have not failed to file cost reports or other documentation or reports, if any, in connection with applicable contractual provisions and/or laws, regulations and rules, and (ii) there are no claims (including notices of any offsets against future reimbursements) pending or, to the Selling Group's Knowledge, threatened or scheduled before any Person, including without limitation any intermediary, carrier, the Health Care Financing Administration, or any other state or federal agency with respect to Medicare or Medicaid Claims filed by the Selling Group Members, or program compliance matters, in either case (i.e., clause (i) or clause (ii)) which would result in a Material Adverse Change. The Selling Group Members have delivered to Buying Group accurate and complete copies of any claims, actions, inquiries or other correspondence or appeals listed in Schedule 4.31(d).

(e) To the Selling Group's Knowledge, (i) the Selling Group Members deliver goods and services, charge rates and bill for services which are in all material respects legal and proper, (ii) the Selling Group Members in all material respects properly pay any appropriate refunds, bill and use all reasonable efforts to collect deductibles and co-payment amounts and apply all payments received, (iii) the Selling Group Members have not engaged in any activities in connection with the Businesses which are prohibited under, and have complied in all material respects with, the Controlled Substances Act, 21 U.S. C. Section 801 et seq., all legislation relating to the Programs and regulations promulgated pursuant to such statutes and any related state or local statutes or regulations concerning the

dispensing and sale of controlled substances and the provision of healthcare products and service to the general public and (iv) the Selling Group Members have complied in all material respects with all laws and regulations pertaining to the return of pharmaceutical products.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYING GROUP

Each Buying Group Member hereby makes the following representations and warranties to each Selling Group Member and the Parent:

Section 5.1 Organization of each Buying Group Member. Each Buying Group Member (a) is a corporation or limited liability company ("LLC") duly organized, validly existing and in good standing under the laws of their respective jurisdictions of organization, (b) has all necessary power and authority and all governmental licenses, permits, authorizations, consents and approvals to own and lease its properties and assets and to carry on its business as presently conducted, and (c) is qualified as a foreign corporation or LLC to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or where the ownership or leasing of such properties or assets requires such qualification, except for such jurisdictions in which the failure to be so qualified or to have such licenses, permits, authorizations, consents or approvals would not have and would not reasonably be expected to have a Material Adverse Effect.

Section 5.2 Authorization. Each Buying Group Member has full authority and all approvals required by applicable Laws to enter into this Agreement and the Related Agreements, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder (other than approvals required by the HSR Act). The execution, delivery and performance of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby by each Buying Group Member have been duly authorized by all requisite action on the part of each Buying Group Member. This Agreement and the Related Agreements have been duly executed and delivered by each Buying Group Member and constitute valid and binding obligations of each Buying Group Member, enforceable against each Buying Group Member in accordance with their respective terms.

Section 5.3 No Breach or Violation. Each Buying Group Member's execution and delivery of this Agreement and the Related Agreements, its compliance with and fulfillment of the terms of this Agreement and the Related Agreements, and its consummation of the other transactions contemplated hereby and thereby, do not and will not, with notice or passage of time or both, after giving effect to consents described on Schedule 5.5 attached hereto which shall be obtained prior to Closing: (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Lien upon the capital stock or assets, properties or rights of each Buying Group Member pursuant to, (iv) give any Person the right to accelerate any obligation under, or (v) result in a violation of, (a) any Law, (b) their respective charter and by-laws, (c) any material franchise, permit, license, authorization, concession, order, judgment, writ, injunction or decree to which a Buying Group Member is subject, or by which any of its assets, properties or rights are bound, or (d) any material lease, mortgage, indenture, deed of trust, trust agreement, note agreement or other agreement or instrument to which a Buying Group Member is subject, or by which any of its assets, properties or rights are bound.

Section 5.4 Litigation. There is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Buying Group, threatened against or affecting a Buying Group Member or the consummation by each Buying Group Member of the transactions contemplated hereby or by the Related Agreements, at law or in equity or before any Governmental Authority or instrumentality or

before any arbitrator of any kind. No Buying Group Member is a party to or subject to any judgment, writ, injunction, order or decree.

Section 5.5 Consents and Approvals. Except as set forth on Schedule 5.5 hereto, no material consent, approval, exemption, audit, waiver, order or authorization of, or declaration, qualification, designation, notice, filing or registration with, any governmental or regulatory authority (foreign or domestic) or any other Person, is required on the part of any Buying Group Member in connection with the execution, delivery and performance of this Agreement and the Related Agreements, or the consummation of the transactions contemplated hereby and thereby.

Section 5.6 Brokers' Fees. No Buying Group Member nor anyone acting on its behalf has retained any broker, finder or agent or agreed to pay any brokerage fees, finder's fee or commission with respect to the acquisition contemplated by this Agreement.

## ARTICLE VI

### COVENANTS

#### Section 6.1 Access to Information; Financial Statements.

(a) Until the Closing or the earlier termination of this Agreement, Selling Group shall afford to Buying Group, and to its officers, employees and authorized representatives, full access, during normal business hours, to all properties, books, records and corporate documents relating to the Purchased Assets, Assumed Liabilities and the Business as may be reasonably requested. Until the Closing or earlier termination of this Agreement, Buying Group shall hold all non-published and confidential information obtained from Selling Group in confidence and shall not disclose any such information to persons other than those of its officers, directors, employees and representatives who have a need to know, or make any commercial use thereof whatsoever. If this Agreement is terminated prior to Closing for any reason, all such information and copies thereof shall be returned to Selling Group within thirty (30) business days or shall be destroyed. Selling Group will cause Selling Group's Accountants to furnish the Buying Group and Buying Group's Accountants all workpapers applicable to the Business relating to any of the periods covered by the Historical Financial Statements.

(b) Selling Group agrees that during the period after the date of this Agreement and prior to the Closing (the "Interim Period"), Selling Group shall provide to Buying Group, within fifteen (15) days of the end of each calendar month, Selling Group's unaudited consolidated and consolidating balance sheet and income statement for such month ("Interim Financial Statements"). The Interim Financial Statements will be true and correct in all material respects, will be prepared using the same accounting methods and procedures as used in the preparation of the Historical Financial Statements, except for the absence of footnotes, will be subject to normal recurring audit adjustments, and will present fairly the financial position of Selling Group as of the date indicated and the results of Selling Group's operations for such period.

(c) Selling Group agrees that within fifteen (15) days of the date of this Agreement, Selling Group will prepare and deliver to Buying Group a form of Statement of Credit Balances to be delivered at the Closing. Buying Group and Selling Group agree to discuss the form in good faith and to implement such changes as the parties may reasonably agree upon in order to finalize such form prior to the Closing.

#### Section 6.2 Employee Matters.

(a) Buying Group will offer terms of employment to all of Selling Group's employees who work in the Business (including employees on short term disability or other approved leaves of absence

as long as such employees return to work within the time periods provided for such leaves under Selling Group Member's leave policies or as required by applicable law), as part of the transactions contemplated herein, other than the employees listed on Schedule 1(i) hereto (the employees who accept offers of employment are hereinafter referred to as "Rehired Employees"). The offers to be extended will include compensation and titles substantially similar to those provided by Selling Group on the date hereof, and otherwise shall be on terms and conditions comparable to the terms and conditions offered by Buying Group to its current employees of like position; provided, however, that no such offer of employment shall be construed to limit the ability of Buying Group to terminate any such employee following the Closing Date for any reason; and provided further that nothing contained in such offer or this Agreement (other than as and to the extent provided in the Employment Agreements) shall be construed as an employment contract between the Buying Group and any Rehired Employee. Each Selling Group Member shall terminate the employment of all Rehired Employees immediately prior to the Closing and any cost, expense or liability resulting from, or incurred in connection with, such terminations (including, but not limited to, any severance, bonus, or other termination pay obligation) shall be the sole responsibility of Selling Group. Each Selling Group Member and Parent shall use its best efforts prior to the Closing to assist Buying Group in entering into employment arrangements satisfactory to Buying Group with each of the key employees of Selling Group listed on Schedule 6.2(a).

(b) Buying Group agrees that each Rehired Employee shall receive full credit for service with Selling Group for purposes of determining such employee's eligibility for and determining the amount of benefit entitlement for holidays, sick days, vacations, and also for purposes of determining eligibility (including, without limitation, waiting periods under group health plans), vesting and benefits provided under any other employee benefit plan, program, policy or other arrangement covering such employee established, continued or otherwise sponsored by Buying Group or an Affiliate of Buying Group after the Closing Date; provided, however, that such crediting of service shall not operate to duplicate any benefit or the funding of any such benefit for any such period of service and must be permitted under the applicable plan of Buying Group or its Affiliates.

(c) Prior to the Closing Date, the Selling Group and Parent shall cause the applicable defined contribution plans of the Selling Group and Parent in which Rehired Employees are eligible to participate ("Selling Group Plans") to provide for the distribution from the Selling Group Plans of the account balances of Rehired Employees as a result of the transactions contemplated by this Agreement. As soon as practicable following the Closing Date, the Selling Group and Parent shall cause the Selling Group Plans to make distributions of the account balances of Rehired Employees, subject to submissions by said Rehired Employees of appropriate distribution forms and compliance with other administrative procedures of the Selling Group and/or Parent.

### Section 6.3 Conduct of Business.

(a) From the date hereof through the Closing Date or earlier termination of this Agreement, each Selling Group Member shall operate its business in the ordinary course of business and shall not take any action inconsistent with this Agreement or which may interfere with, delay or prevent the consummation of the Closing.

(b) Without limiting the generality of the foregoing, each Selling Member shall:

(i) keep in full force and effect its corporate, limited liability company, or partnership existence, as the case may be, and all material rights, franchises and goodwill relating to the Business;

(ii) endeavor to retain its employees and preserve its present relationships with customers, suppliers, contractors, distributors, and others with whom it has business dealings;

(iii) use its best efforts to maintain its Intellectual Property so as not to affect adversely the validity or enforcement thereof;

(iv) continue to maintain insurance reasonably comparable to that in effect on the date of this Agreement;

(v) promptly notify Buying Group in writing if any of the representations and warranties contained in Article IV cease to be accurate and complete in any material respect.

(c) Without limiting the generality of the foregoing, no Selling Group Member shall, except as specifically contemplated by this Agreement or consented to in writing by ProCare, which consent shall not be unreasonably withheld:

(i) enter into, extend, materially modify, terminate, or waive any material right under any Assumed Agreement or Assumed Lease, except in the ordinary course of business;

(ii) sell, assign, transfer, convey, lease, mortgage, pledge or otherwise dispose of or encumber any of the Purchased Assets (other than the sale of inventory in the ordinary course of business), or any interests therein, except for sales or dispositions in the ordinary course of business that do not exceed \$25,000 in the aggregate and the transfer by the Selling Group to ASD of the assets described on Schedule 1(g) hereto, as contemplated by this Agreement;

(iii) merge or consolidate with, purchase substantially all of the assets of, or otherwise acquire any business or any proprietorship, firm, association, limited liability company, corporation or other business organization (other than the transfer to the Selling Group of the ASD Injectibles Business Contracts, as contemplated by this Agreement);

(iv) increase or decrease the rate of compensation of, or pay any unusual compensation to, any officer, employee or consultant of or to any Selling Group Member (other than regularly scheduled increases in base salary or compensation and annual bonuses consistent with prior practice);

(v) enter into any collective bargaining agreement, or create or modify any pension or profit-sharing plan, bonus, deferred compensation, death benefit, or retirement plan, or any other Employee Benefit Plan (except as required by Law), or increase the level of benefits under any such plan, or increase or decrease any severance or termination pay benefit or any other fringe benefit;

(vi) make any capital expenditures other than those expressly disclosed in Schedule 4.9 hereto;

(vii) incur any trade accounts payable other than in the ordinary course of business or make any commitment to purchase quantities of any item of inventory in excess of quantities normally purchased by Selling Group in the ordinary course of business;

(viii) fail to maintain or purchase inventory consistent with its past practices and in the ordinary course of business;

(ix) fail to pay its accounts payable, or fail to pay or discharge when due any other liabilities, in the ordinary course of business, other than in connection with a good faith dispute by a Selling Group Member as to the validity of such liability;

(x) adopt or implement any change in any of its accounting principles or practices (including any change in the determination of its bad debt reserve), except as required by GAAP;

(xi) institute any change in its collection activities with respect to any patient account receivable recorded on the Business' KMS System, or any patient account receivable recorded on the Business' KALOS system which has aged more than 180 days past invoice date, other than pursuant to mutually acceptable policies developed in good faith by Buying Group and Selling Group within fifteen (15) days of the date hereof, or institute any material change in its other practices or policies regarding collection of its accounts receivable, other than as described on Schedule 6.3(c);

(xii) fail to maintain its assets in substantially their current state of repair, excepting normal wear and tear;

(xiii) make any loans or advances to any Person except for expense reimbursements incurred by agents or employees in the ordinary course of business;

(xiv) intentionally do any other act which would cause any representation or warranty of any Selling Group Member or Parent in this Agreement to be or become untrue in any material respect;

(xv) adopt or implement any change (other than routine and insignificant changes) in any of its marketing, referral or business development practices (including without limitation, any programs involving waiver of co-pays or the offer of special rebates or incentives); or

(xvi) enter into any agreement, or otherwise become obligated, to do any action prohibited hereunder.

**Section 6.4 Corrections Division.** For a period of five years following the Closing Date, unless sooner terminated by a successor owner of the Corrections Division Business following a "change of control" (as defined below) of the Corrections Division Business, Selling Group agrees that it will take all appropriate and lawful actions as may be necessary to distribute brochures and/or other written advertisements to inmates who have received services as part of the Corrections Division Business, immediately prior to their discharge from prison or other correctional institution, apprising such inmates of the availability of specialty mail order and specialty retail pharmacy services through ProCare, and identifying ProCare as the preferred provider of such services, provided that any such materials shall indicate that each inmate retains the right to obtain pharmacy services from the provider of his or her choice. For purposes hereof, the term "change of control" shall mean (x) a sale of stock (other than pursuant to a public offering), reorganization, recapitalization or merger of the Corrections Division Business as a result of which the beneficial owners of the then outstanding shares of common stock of the Corrections Division Business and of any other then outstanding voting securities of the Corrections Division Business entitled to vote generally in the election of directors, immediately prior to such sale of stock, reorganization, recapitalization or merger, do not, immediately following such sale of stock, recapitalization, reorganization or merger, beneficially own in the aggregate, directly or indirectly, more than 50% of the then outstanding shares of common stock and of any other then outstanding voting securities entitled to vote generally in the election of directors of the Person resulting from such sale of stock, reorganization, recapitalization or merger, or (y) the sale or other disposition of all or substantially all of the assets of the Corrections Division Business to a Person the voting securities of which immediately following such sale are held by individuals or entities in such proportion so as to effect a change in the beneficial ownership of voting rights of the Corrections Division Business to the extent contemplated by the change in control described in clause (x) above.

**Section 6.5 Notices and Consents.**

(a) Selling Group will give the notices to third parties, and up to and after the Closing (to the extent not obtained at Closing) will use its commercially reasonable efforts to obtain the third party consents described on Schedule 4.5, provided, however, that Selling Group shall use its best efforts to obtain the consents described as requiring best efforts on Schedule 7.8. Each of the parties will give the

notices to, make the filings with, and use its commercially reasonable efforts to obtain the authorizations, consents, and approvals of governments and governmental agencies described on Schedule 4.5. Without limitation of the preceding two sentences, the parties shall each cooperate and use their reasonable best efforts to prepare and file with the U.S. Federal Trade Commission and the U.S. Department of Justice and other regulatory authorities as promptly as possible, all requisite applications and amendments thereto together with related information, data and exhibits necessary to satisfy the requirements of the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act"). Each party shall submit its initial filing under the HSR Act within 10 days from the date hereof. The parties shall share equally all filing fees in connection with compliance with the HSR Act.

(b) To the extent Selling Group is unable prior to Closing to obtain a consent described on Schedule 4.5 necessary to transfer any Purchased Asset (each a "Non-Transferable Asset"), each Selling Group Member agrees to execute and deliver to Buying Group at such time as any such consent to the transfer of any such Non-Transferable Asset is obtained by such Selling Group Member after the Closing, an assignment and assumption agreement reasonably satisfactory to the parties and any such other documents or instruments as may be reasonably necessary or advisable to transfer to Buying Group all of Selling Group's interest in and title to such Non-Transferable Asset.

Section 6.6 Further Assurances. Upon the terms and subject to the conditions contained herein, each of the parties hereto agrees (a) to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and the Related Agreements, (b) to execute any further documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated hereunder, and (c) to cooperate with each other in connection with the foregoing. In addition, subject to Section 3.2(c), Selling Group agrees that prior to Closing it will take all actions necessary to transfer legal or record ownership of assets of Stadt Solutions, LLC to OPCO or cause ownership of such assets to be transferred to Buying Group at the Closing, so as to include such assets in the Purchased Assets.

#### Section 6.7 Cooperation; Access to Records After Closing.

(a) Buying Group will cooperate with Selling Group to obtain any and all approvals and consents necessary to effect the transactions contemplated by this Agreement.

(b) The Buying Group Members recognize that subsequent to the Closing they may have information and documents which relate to the Selling Group with respect to the period prior to the Closing, including, without limitation, information pertaining to Taxes, the Business, the Assumed Liabilities, the Non-Assumed Liabilities, the Purchased Assets, the Excluded Property and the Selling Group's respective employees, and to which Parent may need access subsequent to the Closing. The Buying Group shall provide Parent and its representatives access, during normal business hours on reasonable notice, to all such information and documents (but excluding attorney work product or other privileged communication), and to such of its employees, which Parent reasonably requests. The Buying Group agrees that prior to the destruction or disposition of any such documents or any books or records pertaining to or containing such information at any time within five (5) years after the Closing the Buying Group shall provide not less than thirty (30) calendar days prior written notice to Parent of any such proposed destruction or disposal, provided, that in any matter involving Taxes, if Buying Group receives a written request from Selling Group not earlier than ninety (90) days before, but not later than, the end of such five-year period (the "Disposal Date"), the destruction or disposition of such Tax documents, books or records shall be deferred for one (1) year after the Disposal Date. Thereafter, the destruction or disposition of such Tax documents, books or records shall be deferred for successive one (1) year periods, provided that Buying Group receives annually a similar written request from Selling Group not earlier than ninety (90) days before, but not later than, the anniversary of the Disposal Date.

In no event, however, shall the destruction or disposition of such Tax documents, books or records be deferred beyond the later of the expiration of all applicable statutes of limitations (including extensions thereof) or the conclusion of all litigation (including exhaustion of all appeals relating thereto) with respect to such Taxes. If Parent desires to obtain any such documents, it may do so by notifying the Buying Group in writing at any time prior to the scheduled date for such destruction or disposal. Such notice must specify the documents which Parent wishes to obtain. Parent and the Buying Group shall then promptly arrange for the delivery of such documents. All out-of-pocket costs associated with the delivery of the requested documents shall be paid by Parent.

(c) With respect to audits conducted by federal, state and local taxing authorities, the Buying Group agrees to cooperate with Parent to the extent it has any information required by Parent to respond to information document requests presented by such taxing authorities as promptly as practicable. Such information document requests may include, but shall not be limited to, all tax matters related to the Selling Group Members and their respective Affiliates for all tax years currently open under the relevant jurisdictions' statute of limitations. All out-of-pocket costs associated with the delivery of the requested documents shall be paid by Parent.

(d) With respect to the Counsel Litigation and any other litigation, investigation or review by any Governmental Authority or other Person involving a Selling Group Member or Parent with respect to the Business or the Purchased Assets, Buying Group agrees to reasonably cooperate with such Selling Group Member or Parent to the extent it has any information required by such Person which may relate to such litigation, investigation or review. In furtherance of the foregoing, Buying Group shall: (i) furnish or cause to be furnished to such Selling Group Member or Parent such documents, records, and other data as such Selling Group Member shall reasonably request from time to time, and (ii) make available to Selling Group Member or Parent from time to time certain Rehired Employees upon reasonable prior notice and during regular business hours, provided that such access to such Rehired Employees does not unreasonably affect such Rehired Employees' employment responsibilities or Buying Group's operation of the Business following the Closing as reasonably determined by Buying Group. All fees and expenses, including without limitation out-of-pocket costs and reasonable attorneys fees, associated with such cooperation by Buying Group shall be paid by Parent.

Section 6.8 Casualty Losses. In the event that there shall have been suffered between the date hereof and the Closing Date any casualty loss relating to the Purchased Assets, Selling Group will promptly notify Buying Group of such event and, if the Closing occurs, shall assign to Buying Group all of the right, title and interest of Selling Group in and to insurance proceeds payable as a result of the occurrence of the event resulting in such loss or damage.

Section 6.9 Environmental Studies. Prior to the Closing, Buying Group shall have the right, at its expense, to undertake such environmental studies of each of the premises at which any of the Selling Group Members perform the Business (the "Premises"), including reviewing records, inspecting the properties and testing the air, subsoil, groundwater and building materials at the Premises, as it shall deem necessary to determine whether the Premises are in compliance with all applicable Environmental Laws and whether any Hazardous Substances are present at the Premises, but shall indemnify and hold each Selling Group Member harmless from any loss, cost, or damage proximately caused by such inspection. Such inspection shall be scheduled and performed so as not to unreasonably interfere with the business of the Selling Group.

Section 6.10 No Shop. Prior to the Closing or earlier termination of this Agreement, none of the Selling Group Members nor Parent nor any of their respective Affiliates, advisors or representatives shall, directly or indirectly, solicit, encourage or initiate any contact with, negotiate with, or provide any information to, endorse or enter into any agreement with respect to, or take any other action, directly or indirectly, to facilitate any person or group, other than Buying Group and its representatives, concerning

any inquiries or the making of any proposals concerning any merger or combination with a Selling Group Member, or a purchase or sale of all or substantially all of the assets of a Selling Group Member, or purchase or sale of a substantial equity interest in any Selling Group Member or any similar transaction involving any Selling Group Member or Parent (other than solely with respect to the Corrections Division Business).

Section 6.11 Assignment of Rights. At the Closing, each Selling Group Member shall execute a non-exclusive assignment (the "Assignment"), in the form attached hereto as Exhibit 6.11, pursuant to which such Selling Group Member shall assign to Buying Group, on a non-exclusive basis, all the rights of indemnification relating to the Business or the Purchased Assets that such Selling Group Member shall have received from the third-parties identified on Schedule 6.11 hereto to the extent that such Selling Group Member has the right to effect such assignments. At the Buying Group's request, each Selling Group Member will use commercially reasonable efforts to obtain any necessary consents to each such Assignment.

Section 6.12 Software Licenses. Notwithstanding Selling Group's disclosure on Schedule 4.17 with respect to an insufficient number of software licenses, Selling Group and Buying Group agree that Selling Group retains all liability arising out of such unlicensed use through the Closing Date and is responsible for procuring a sufficient number of such licenses to cure such deficiency prior to the Closing Date after consultation with Buying Group as to its future needs.

## ARTICLE VII

### CONDITIONS PRECEDENT TO BUYING GROUP'S OBLIGATIONS

Buying Group's obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment or satisfaction (or waiver in whole by Buying Group in writing) on or before the Closing Date (or such sooner date as may be specified) of each of the following conditions:

Section 7.1 Correctness of Representations and Warranties. Each of the representations and warranties of each Selling Group Member and Parent contained herein and in the certificates and other documents delivered to Buying Group pursuant hereto shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on and as of the date hereof (except those representations and warranties qualified by materiality, which shall be true and correct in all respects).

Section 7.2 No Adverse Change in Business or Properties. No Material Adverse Change shall have occurred with respect to the Business since May 31, 2000; provided, however, that any adverse change in the Daily Rx Average shall be governed by Section 7.3 and not this Section 7.2.

Section 7.3 Prescriptions. The Daily Rx Average for the sixty (60) days ended on the fifth Business Day preceding the Closing Date shall not be less than eighty percent (80%) of the Daily Rx Average for April and May, 2000.

Section 7.4 Compliance with Agreement. Each Selling Group Member and Parent shall have performed and complied in all material respects with their respective agreements, covenants and obligations under this Agreement required to be performed or complied with on or prior to the Closing Date.

Section 7.5 Certificate of Selling Group Member. Each Selling Group Member shall have delivered to Buying Group, a certificate of its chief executive officer, dated the Closing Date, certifying in such officer's capacity as an executive officer, in such form as Buying Group may reasonably request, as to the fulfillment of the conditions set forth in Section 7.1, 7.2, 7.3, 7.4 above.

Section 7.6 Incumbency Certificate. Buying Group shall have received from each Selling Group Member, an incumbency certificate, dated the Closing Date, signed by a duly authorized officer thereof and giving the name and bearing a specimen signature of each individual authorized to sign, in the name and on behalf of each Selling Group Member, this Agreement and each of the Related Agreements to which each Selling Group Member is or is to become a party, and to give notices and to take other action on behalf of each Selling Group Member under each of such documents.

Section 7.7 Absence of Litigation. No suit, action, investigation, inquiry or other proceeding shall be pending before any court or Governmental Authority to restrain or prohibit, or to obtain damages or other relief in connection with, or to question the validity or legality of, this Agreement or the consummation of the transactions contemplated hereby, or to restrict or impair the ability of Buying Group to operate the Business.

Section 7.8 Consents. The consummation of the transactions contemplated by this Agreement shall not be prohibited by any Law or Governmental Authority, and shall not subject any Buying Group Member to any penalty. All consents, approvals and waivers of Governmental Authorities that are set forth on Schedule 7.8 hereto shall have been obtained, and any applicable waiting periods imposed by such Governmental Authorities shall have expired. All consents, approvals and waivers of third parties that are set forth on Section 7.8 hereto (including, without limitation, consents to assignment from all landlords who are parties to the Assumed Leases, including the leases of the facilities in Pittsburgh, Pennsylvania, which shall not impose any change in rental required thereunder or any other more onerous terms than is currently the case in the respective leases) shall have been obtained. Notwithstanding the preceding sentence, the consent, approval or waiver of any third party shall not be a condition precedent to Buying Group's obligations to close the transactions contemplated herein if such consent, approval or waiver has been offered by such third party and the failure to obtain such consent, approval or waiver is due to (i) the failure by Buying Group to accept the existing terms of any contract, lease or other agreement requiring consent, approval or waiver which is set forth on Schedule 7.8 or (ii) CVS's failure to guarantee the performance of any Buying Group Member under any Assumed Lease if required by the landlord thereunder as a condition to such landlord's consent to assignment.

Section 7.9 Licenses, etc. All licenses, permits, consents, concessions and other authorizations of Governmental Authorities to be transferred by Selling Group as described on Schedule 7.9 shall have been duly transferred or issued to Buying Group, all on terms which impose no greater economic hardship on any Buying Group Member than those which existed or would have been imposed upon the Selling Group Member but for such transfer or issuance, or each Selling Group Member shall have executed a power of attorney in the form attached hereto as Exhibit 7.9 or otherwise satisfactory to Buying Group permitting Buying Group to use such licenses and permits pending transfer or reissuance.

Section 7.10 FIRPTA Certificate. Each Selling Group Member shall provide the Buying Group with a duly executed and dated Foreign Investment in Real Property Tax Act ("FIRPTA") Non-foreign Seller Certificate, substantially in the form required by U.S. Treasury Regulation Section 1.1445-2(b)(2)(iii)(B) as set forth in Exhibit 7.10 attached hereto.

Section 7.11 Customer Lists. Each Selling Group Member shall have delivered to Buying Group computer files containing true and complete lists of each of Selling Group Member's customers with respect to the Business (including computer profiles of each customer which shall include such customer's name, address, third party information, and refill information for the past five years or such shorter period as required by applicable law).

Section 7.12 Certified Charter; Good Standing. Each Selling Group Member shall have delivered to each Buying Group Member: (i) a copy of the articles of incorporation or certificate of formation of each Selling Group Member which have been certified by the appropriate Secretary of the States of Delaware, Hawaii, and California, (ii) limited liability company and tax good standing

certificates from the States of Delaware, Hawaii, and California, and (iii) corporate good standing certificates from those jurisdictions in which it is qualified to do business. Such certificates shall be dated a date not more than fifteen (15) days prior to the Closing Date.

Section 7.13 Related Agreements. Each Selling Group Member and the other parties thereto (other than Buying Group) shall have executed and delivered the Related Agreements.

Section 7.14 Proof of Action. Buying Group shall have received from each Selling Group Member, copies, certified by a duly authorized officer thereof to be true and complete as of the Closing Date, of the records of all partnership and member action taken to authorize the execution, delivery and performance of this Agreement and each of the Related Agreements to which a Selling Group Member is a party.

Section 7.15 Leases. Lessors under the Assumed Leases (expressly excluding those leases with respect to any closed stores) shall have entered into lease assignment agreements and executed estoppel certificates upon terms and conditions reasonably satisfactory to ProCare.

Section 7.16 ASD Contracts. ASD shall have transferred to a Selling Group Member the ASD Injectibles Business Contracts upon terms and conditions satisfactory to ProCare.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO SELLING GROUP'S OBLIGATIONS

Selling Group's obligation to consummate the transactions contemplated by this Agreement are subject to the fulfillment or satisfaction (or waiver in whole by Selling Group in writing) on or before the Closing Date (or such sooner date as may be specified) of each of the following conditions:

Section 8.1 Correctness of Representations and Warranties. Each of the representations and warranties of each Buying Group Member contained herein and in the certificates and other documents delivered to Selling Group pursuant hereto shall be true and correct in all material respects as of the Closing Date (except those representations and warranties qualified by materiality, which shall be true and correct in all respects).

Section 8.2 Compliance with Agreement. Each Buying Group Member shall have performed and complied in all material respects with its agreements, covenants and obligations under this Agreement required to be performed or complied with on or prior to the Closing Date.

Section 8.3 Certificate of Buying Group. Each Buying Group Member shall have delivered to Selling Group a certificate of the President of each Buying Group Member, dated the Closing Date, certifying in such officer's capacity as an executive officer, in such form as Selling Group may reasonably request, as to the fulfillment of the conditions set forth in Sections 8.1 and 8.2 above.

Section 8.4 Absence of Litigation. No suit, action, investigation, inquiry or other proceeding shall be pending before any court or Governmental Authority to restrain or prohibit, or to obtain damages or other relief in connection with, or question the validity or legality of, this Agreement or the consummation of the transactions contemplated hereby.

Section 8.5 Proof of Action. Selling Group shall have received from each Buying Group Member, copies, certified by a duly authorized officer, member or manager thereof to be true and complete as of the Closing Date, of the records of all requisite action taken to authorize the execution, delivery and performance of this Agreement and each of the Related Agreements to which a Buying Group Member is a party.

Section 8.6 Incumbency Certificate. Each Selling Group Member shall have received from each Buying Group Member, an incumbency certificate, dated the Closing date, signed by a duly authorized officer thereof and giving the name and bearing a specimen signature of each individual authorized to sign, in the name and on behalf of each Buying Group Member, this Agreement and each of the Related Agreements to which each Buying Group Member is or is to become a party, and to give notices and to take other action on behalf of each Buying Group Member under each of such documents.

Section 8.7 Related Agreements; Guaranty. Each Buying Group Member and the other parties thereto (other than Selling Group) shall have executed and delivered the Related Agreements. CVS Corporation shall have executed the CVS Guaranty.

Section 8.8 Proceedings and Documents. All requisite action with respect to the transactions contemplated hereby and all documents incident thereto shall be satisfactory in form and substance to Selling Group and its counsel.

Section 8.9 Consents. The consummation of the transactions contemplated by this Agreement shall not be prohibited by any law or Governmental Authority, and shall not subject any Selling Group Member to any penalty. All consents, approvals and waivers of Governmental Authorities and of any other Persons that are set forth on Schedule 8.9 hereto shall have been obtained, and any applicable waiting periods imposed by such Governmental Authorities or other Persons shall have expired.

Section 8.10 Good Standing Certificates. Each Buying Group Member shall have delivered to Selling Group a good standing certificate from the jurisdiction of its incorporation dated a date not more than fifteen (15) days prior to the Closing Date.

## ARTICLE IX

### INDEMNIFICATION

Section 9.1 By Each Selling Group Member and the Parent. From and after the Closing Date, and regardless of any investigation made at any time by or on behalf of Buying Group, but subject to the limitations of this Article IX, each Selling Group Member and the Parent, on a joint and several basis, agree to reimburse, indemnify and hold harmless each Buying Group Member and their respective successors and assigns, and any director, shareholder, employee or officer thereof (an "Indemnified Buyer Party" and collectively the "Indemnified Buyer Parties") against and in respect of costs of investigations and any and all damages, losses, claims, deficiencies, liabilities, suits, demands, judgments, diminution in value, costs and expenses (including costs of investigations and reasonable attorneys' fees (each a "Loss" and collectively "Losses") incurred or suffered by any Indemnified Buyer Party arising from or relating to:

(a) any and all Non-Assumed Liabilities;

(b) any and all litigation, investigations and reviews described in Schedules 4.21, 4.22 and 4.31, including, without limitation, the Counsel Litigation, and any and all other actions, suits, claims, or legal, administrative, arbitration, governmental or other proceedings or investigations (including any audits and recoupments) against any Indemnified Buyer Party that arise out of omissions or events occurring prior to the Closing Date and that relate to a Selling Group Member in their capacity as such or any of their respective predecessors or any shareholder, manager, member, officer, employee, agent, distributor, supplier, representative or subcontractor of any Selling Group Member;

(c) any misrepresentation, breach or inaccuracy in or omission from any representation or warranty made by a Selling Group Member or Parent under this Agreement or any certificate, schedule, statement, document or instrument furnished to a Buying Group Member pursuant hereto;

(d) any breach or non-fulfillment of any agreement or covenant on the part of a Selling Group Member or Parent under this Agreement to be performed on or following the Closing Date;

(e) without limiting any of the foregoing indemnification provisions, (x) any misrepresentation, breach or inaccuracy in or omission from any representation or warranty made by a Selling Group Member or Parent under Section 4.14 [Tax Matters] of this Agreement, and (y) any and all liabilities of the Selling Group for the payment of any Tax owed by Parent, Parent's Affiliates and all Selling Group Members and any Tax incident to or arising as a consequence of the consummation of the transactions contemplated hereby, including without limitation any interest, additions to tax and penalties that may be assessed with respect thereto; or

(f) without limiting any of the foregoing indemnification provisions, the failure of a Selling Group Member to comply with the bulk sales law and any other similar laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement.

Section 9.2 Notice of Claims; Defense of Third Party Claims. A party claiming indemnification under this Article IX (the "Asserting Party") must notify (in writing and in reasonable detail) the party from which indemnification is sought (the "Defending Party") of the nature and basis of such claim for indemnification. If such claim relates to a claim, suit, litigation or other action by a third party against the Asserting Party or any fixed or contingent liability to a third party (a "Third Party Claim"), the Defending Party may elect to assume and control the defense of the Third Party Claim at its own expense with counsel selected by the Defending Party from and after such time as the Defending Party unconditionally agrees in writing to accept, as against the Asserting Party, all liabilities on account of such Third Party Claim. Assumption of such liability, as against the Asserting Party, shall not be deemed an admission of liability as against any such third party. Notwithstanding the foregoing, the Defending Party may not assume or control the defense if the named parties to the Third Party Claim (including any impleaded parties) include both the Defending Party and the Asserting Party and representation of both parties by the same counsel (in such counsel's reasonable determination) would be inappropriate due to actual or potential differing interests between them, in which case the Asserting Party shall have the right to defend the Third Party Claim and to employ counsel reasonably approved by the Defending Party, and to the extent the matter is determined to be subject to indemnification hereunder, the Defending Party shall reimburse the Asserting Party for the reasonable costs of its counsel. If the Defending Party assumes liability for the Third Party Claim as against the Asserting Party and assumes the defense and control of the Third Party Claim pursuant to this Section 9.2, the Defending Party shall not be liable for any fees and expenses of counsel for the Asserting Party incurred thereafter in connection with the Third Party Claim (except in the case of actual or potential differing interests, as provided in the preceding sentence), but shall not agree to any settlement of such Third Party Claim which does not include an unconditional release of the Asserting Party by the third party claimant on account thereof. If the Defending Party does not assume liability for and the defense of the Third Party Claim pursuant to this Section 9.2, the Asserting Party shall have the right to assume the defense of and, if such Asserting Party shall have notified the Defending Party of the Asserting Party's intention to negotiate a settlement of the Third Party Claim, which notice shall include the material terms of any proposed settlement in reasonable detail, to settle the Third Party Claim (at the Defending Party's expense to the extent the matter is determined to be subject to indemnification hereunder) on terms not materially inconsistent with those set forth in such notice, unless the Defending Party shall have notified the Asserting Party in writing of the Defending Party's election to assume liability for and the defense of the Third Party Claim pursuant to this Section 9.2 within ten (10) days after receipt of such notice of intention to settle, and the Defending Party promptly thereafter shall have taken appropriate action to implement such defense. The Asserting Party shall not be entitled to settle any such Third Party Claim pursuant to the preceding sentence unless such settlement includes an unconditional release by the third party claimant on account thereof. The Asserting Party and the Defending Party shall use all

reasonable efforts to cooperate fully with respect to the defense of any Third Party Claim covered by this Article IX.

Section 9.3 Set-off. Buying Group shall have the right, notwithstanding any other rights it might have against any other Person, to set-off any unpaid indemnification obligation to which it is entitled under this Article IX against any amounts owed by it to a Selling Group Member, Parent or any Affiliate of Parent, pursuant to this Agreement or any of the Related Agreements to which such Persons are a party.

Section 9.4 Limitations. The obligations of each Selling Group Member and the Parent to indemnify the Indemnified Buyer Parties pursuant to this Article IX shall be subject to the following limitations:

(a) No indemnification shall be required to be made by any Selling Group Member or the Parent until the aggregate amount of the Indemnified Buyer Parties' Losses exceeds \$500,000 (the "Deductible"), whereupon indemnification shall be required to be made by the Selling Group and the Parent to the full extent of such Losses in excess of \$250,000; provided, however, that the Deductible shall not be applicable to Indemnified Buying Parties' Losses arising from or relating to:

(i) the indemnification obligations under Sections 9.1(a), (b), (d), (e) and (f) hereof ("Excluded Claims");

(ii) breaches of the representations set forth in Sections 4.3 [Authorization; Enforceability], 4.4 [No Breach or Violation], 4.5 [Consents and Approvals], 4.14 [Tax Matters] and the second sentence of Section 4.16 [Title to Purchased Assets] or Section 4.25 [Brokers' Fees] ("Excluded Representations"); or

(iii) fraud ("Fraud Claims").

(b) All representations and warranties contained in this Agreement shall survive the Closing until the second (2nd) anniversary thereof; provided, however, that the following claims shall survive for three months beyond the applicable statute of limitations period (the applicable period of survival being referred to herein as the "Survival Period"):

(i) Excluded Claims;

(ii) Excluded Representations; or

(iii) Fraud Claims.

To the extent a claim is made in respect of a representation or warranty within the applicable Survival Period, such representation or warranty shall survive after such Survival Period for purposes of such claim until such claim is finally determined or settled.

(c) The liability of each Selling Group Member and the Parent for their indemnification obligations under this Article IX shall be limited in the aggregate to an amount equal to fifty percent (50%) of the Base Purchase Price; provided, however, that there shall be no limit applicable to Losses arising from or relating to:

(i) Excluded Claims;

(ii) Excluded Representations; or

(iii) Fraud Claims.

Section 9.5 Buying Group. From and after the Closing Date, but subject to the limitations of this Article IX, each Buying Group Member, on a joint and several basis, agrees to reimburse, indemnify and hold harmless each Selling Group Member and their respective successors and assigns, and any director, shareholder, employee or officer thereof (an "Indemnified Seller Party" and collectively the "Indemnified Seller Parties") against and in respect of all Losses incurred or suffered by any Indemnified Seller Party arising from or relating to:

(a) Any and all Assumed Liabilities;

(b) Any misrepresentation, breach or inaccuracy in or omission from any representation or warranty made by a Buying Group Member under this Agreement or any certificate, schedule, statement, document or instrument furnished to a Selling Group Member pursuant hereto; or

(c) Any breach or nonfulfillment of any agreement or covenant on the part of a Buying Group Member under this Agreement to be performed on or following the Closing Date.

Section 9.6 Limitations – Buying Group. The obligations of Buying Group to indemnify the Indemnified Seller Parties pursuant to this Article IX shall be subject to the following limitations:

(a) No indemnification shall be required to be made by Buying Group until the aggregate amount of the Indemnified Seller Parties' Losses exceeds the Deductible and then indemnification shall be required to be made by Buying Group to the full extent of such Losses in excess of \$250,000; provided, however, that the Deductible shall not be applicable to Losses arising from or relating to:

(i) Indemnification obligations under 9.5(a) ("Assumed Liability Claims");

(ii) Fraud Claims.

(b) All representations and warranties contained in this Agreement shall survive the Closing until the second (2nd) anniversary thereof; provided, however, that the following claim shall apply for three months beyond the applicable statute of limitations (the applicable period of survival being referred to herein as the "Survival Period"):

(i) Assumed Liability Claims;

(ii) Fraud Claims.

To the extent a claim is made in respect of a representation or warranty within the applicable Survival Period, such representation or warranty shall survive after such Survival Period for purposes of such claim until such claim is finally determined or settled.

(c) The liability of Buying Group and ProCare for its respective indemnification obligations under this Article IX shall be limited in the aggregate to an amount equal to fifty percent (50%) of the Base Purchase Price; provided, however, that there shall be no limit applicable to Losses arising from or relating to Assumed Liability Claims and Fraud Claims.

## ARTICLE X

### TERMINATION

Section 10.1. Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto, at any time prior to the Closing:

- (a) by mutual written consent of Buying Group and Selling Group;
- (b) by either Buying Group or Selling Group, if any court of competent jurisdiction in the United States or other United States governmental body shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise permanently prohibiting the sale of the Purchased Assets to Buying Group (and in which case Buying Group and Selling Group shall have used all reasonable efforts to have such order, decree, ruling or other action lifted or reversed) and such order, decree, ruling or other action shall have become final and nonappealable;
- (c) by Buying Group, if any Selling Group Member shall have breached any of its representations herein and such breach or breaches, in the aggregate, would reasonably be expected to have a Material Adverse Effect or if any Selling Group Member shall have materially breached any of its covenants hereunder (and any such breach shall not have been cured to the reasonable satisfaction of Buying Group within 10 days after Buying Group's notice to Selling Group of such breach);
- (d) by Selling Group, if any Buying Group Member shall have materially breached any of its representations herein and such breach or breaches, in the aggregate, would reasonably be expected to have a Material Adverse Effect or if any Buying Group Member shall have materially breached any of its covenants hereunder (and any such breach shall not have been cured to the reasonable satisfaction of Selling Group within ten (10) days after Selling Group's notice to Buying Group of such breach); or
- (e) by either Buying Group or Selling Group if the Closing shall not have occurred on or before October 1, 2000 (the "Outside Date"), unless (i) the parties agree in writing to extend the Outside Date, or (ii) the failure to have the Closing shall be due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it at or prior to the Closing.

Section 10.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 10.1, written notice thereof shall be given by the terminating party to the other party specifying the provision hereof pursuant to which such termination is being made and the Agreement shall become null and void and of no further force or effect, and no party hereto (or any of its Affiliates, directors, officers, managers, agents or representatives) shall have any liability or obligation hereunder (except for any liability of any party then in breach); provided, however, that the provisions of all but the first and fourth sentences of Section 6.1 (Access) and all of Section 11.2 (Expenses) shall survive any such termination.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Assignment. Neither this Agreement, nor any right hereunder, may be assigned by any of the parties hereto except that at ProCare's option, a Buying Group Member shall have the right to designate one or more Affiliates as a Buying Group Member for all or any portion of the Purchased Assets, provided that ProCare remains liable hereunder and the CVS Guaranty remains in effect.

Section 11.2 Payment of Fees and Expenses. Each party to this Agreement agrees to pay its own costs, fees and expenses incurred (including legal, accounting, consulting, appraisal, investment banking and similar professional fees) in connection with the transactions contemplated hereunder (other than with respect to the HSR Act filing fee as provided in Section 6.5 hereto). No portion of any such costs, fees and expenses incurred by a Selling Group Member shall be accrued on the Closing Balance Sheet.

Section 11.3 Further Acts by Each Selling Group Member and the Parent. From and after the Closing Date, upon the reasonable request of any Buying Group Member, each Selling Group Member, and the Parent shall execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be required to convey and transfer to and vest in each Buying Group Member and protect their respective right, title and interest in the Purchased Assets to be acquired hereunder, and as may be appropriate otherwise to carry out the transactions contemplated by this Agreement.

Section 11.4 Entire Agreement, Construction, Counterparts, Effectiveness. This Agreement, including the Schedules and Exhibits delivered pursuant hereto, constitutes the entire agreement of the parties in respect of the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions of the parties, whether written or oral, and may not be changed, terminated or discharged orally. The Table of Contents and Headings appearing in this Agreement have been inserted solely for the convenience of the parties and shall be of no force and effect in the construction of the provisions of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. This Agreement may be executed in several counterparts, and each executed counterpart shall be considered an original of this Agreement. This Agreement shall not become effective until it has been executed by all of the parties hereto.

Section 11.5 Notices. Any notice or other communication in connection with this Agreement or any Related Agreement shall be deemed to be delivered if in writing (or in the form of telecopy) addressed as provided below (a) when actually delivered, (b) when telecopied to said address, or (c) in the case of a letter, one (1) business day after deposit with a nationally recognized overnight courier or five (5) business days after the same has been deposited in the United States mails, postage prepaid and certified:

- (i) If to a Buying Group Member:

CVS Corporation  
One CVS Drive  
Woonsocket, Rhode Island 02895  
Attention: Zenon P. Lankowsky, Esq.  
Telecopy No. (401) 770-2603

with a copy to:

Edwards & Angell, LLP  
2800 Bank Boston Plaza  
Providence, Rhode Island 02903  
Attention: Christopher D. Graham, Esq.  
Telecopy No. 401-276-6611

- (ii) If to a Selling Group Member or Parent:

Bergen Brunswig Corporation  
4000 Metropolitan Drive  
Orange, CA 92868  
Attention: Milan A. Sawdei, Esq.  
Telecopy No. 714-385-4000

with a copy to:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, NJ 07068  
Attention: Peter H. Ehrenberg, Esq.  
Telecopy No. 973-597-2351

Any party may change the address to which notices are to be addressed by giving the other parties hereto notice in the manner herein set forth.

Section 11.6 Changes in Writing. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

Section 11.7 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any person.

Section 11.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, as applied to contracts made and performed within the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other state.

Section 11.9 Consent to Jurisdiction

THE PARTIES HERETO HEREBY AGREE TO SUBMIT TO THE JURISDICTION OF THE COURTS IN AND OF THE STATE OF RHODE ISLAND AND THE STATE OF CALIFORNIA, AND TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF RHODE ISLAND AND THE SOUTHERN DISTRICT OF CALIFORNIA, AND TO THE STATE AND FEDERAL COURTS TO WHICH AN APPEAL OF THE DECISIONS OF SUCH COURTS MAY BE TAKEN, AND CONSENT THAT SERVICE OF PROCESS WITH RESPECT TO ALL COURTS IN AND OF THE STATE OF RHODE ISLAND AND THE STATE OF CALIFORNIA, AND THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF RHODE ISLAND AND THE SOUTHERN DISTRICT OF CALIFORNIA, MAY BE MADE BY REGISTERED MAIL TO THEM AT THEIR RESPECTIVE ADDRESSES SET FORTH IN SECTION 11.5 HEREOF.

Section 11.10 Non-Competition by Selling Group/Parent.

(a) For a period of four years following the Closing Date (the "Restrictive Period"), each Selling Group Member and Parent will not, and will cause the respective Affiliates controlled by any of

them not to, directly or indirectly, anywhere in North America (the "Territory"), own, operate or engage in a Competing Business. For purposes of this Agreement, the Selling Group and Parent will not be deemed to have violated the preceding sentence in the event that (A) any Selling Group Member, Parent or any of the respective Affiliates controlled by any of them acquires the capital stock or a substantial portion of the assets of a Person whose revenues attributable to a Competing Business during its last fiscal year are less than \$5 million and represent less than 25% of the aggregate revenues of such Person during such fiscal year; or (B) if any Selling Group Member, Parent or any of the respective Affiliates controlled by any of them acquires the capital stock or a substantial portion of the assets of a Person whose revenues attributable to a Competing Business during its last fiscal year are equal to or greater than \$5 million or represent at least 25% of the aggregate revenues of such Person during such fiscal year, such Selling Group Member, Parent or such Affiliate promptly offers to sell such Competing Business to the Buying Group on commercially reasonable terms at a price that is either agreed upon by the Selling Group and the Buying Group or is determined by a valuation firm mutually acceptable to the Selling Group and the Buying Group to represent the fair market value of such Competing Business; provided that if the Buying Group does not, or is not permitted by Law to, accept such offer, such Selling Group Member, Parent or such Affiliate shall use all reasonable commercial efforts to dispose of the Competing Business promptly on commercially reasonable terms.

(b) For a period of twelve months following the Closing Date (the "First Twelve Month Period"), each Selling Group Member and Parent agrees that it will not, and will cause the respective Affiliates controlled by any of them not to, without the prior written consent of ProCare, hire, engage, employ or interfere with or attempt to hire, engage, employ or interfere with any Rehired Employee who was an exempt employee of Selling Group at the Closing Date, other than Andrew Wolpe and Bernie Heron.

(c) For a period of twelve months following the First Twelve Month Period (the "Second Twelve Month Period"), each Selling Group Member and Parent agrees that it will not, and will cause the respective Affiliates controlled by any of them not to, without the prior written consent of ProCare, solicit or attempt to hire any Rehired Employee who was an exempt employee of Selling Group at the Closing Date, other than Andrew Wolpe and Bernie Heron.

(d) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 11.10 is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to achieving the intention of the parties as set forth herein, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

#### Section 11.11 Non-Competition – Buying Group.

(a) During the Restrictive Period, each Buying Group Member agrees that it will not, and will cause each of the Affiliates controlled by it not to, directly or indirectly, anywhere in the Territory, own, operate or engage in a Competing Corrections Division Business. For purposes of this Agreement, the Buying Group will not be deemed to have violated the preceding sentence in the event that (A) any Buying Group Member or any of the Affiliates controlled by it acquires the capital stock or a substantial portion of the assets of a Person whose revenues attributable to a Competing Corrections Division Business during its last fiscal year are less than \$2.5 million and represent less than 25% of the aggregate revenues of such Person during such fiscal year.; or (B) if any Buying Group Member or any of the Affiliates controlled by it acquires the capital stock or a substantial portion of the assets of a Person whose revenues attributable to a Competing Corrections Division Business during its last fiscal year are equal to or greater than \$2.5 million or represent at least 25% of the aggregate revenues of

such Person during such fiscal year, such Buying Group Member or such Affiliate promptly offers to sell such Competing Corrections Division Business to the Selling Group on commercially reasonable terms at a price that is either agreed upon by the Selling Group and the Buying Group or is determined by a valuation firm mutually acceptable to the Selling Group and the Buying Group to represent the fair market value of such Competing Corrections Division Business; provided that if the Selling Group does not, or is not permitted by Law to, accept such offer, such Buying Group Member or such Affiliate shall use all reasonable commercial efforts to dispose of the Competing Corrections Division Business promptly on commercially reasonable terms.

(b) For the First Twelve Month Period, each Buying Group Member agrees that it will not, and will cause each of the Affiliates controlled by it not to, without the prior written consent of Parent, hire, engage, employ or interfere with or attempt to hire, engage, employ or interfere with, any exempt employee of the Corrections Division Business at the Closing Date.

(c) For the Second Twelve Month Period, each Buying Group Member agrees that it will not, and will cause each of the Affiliates controlled by it not to, without the prior written consent of Parent, solicit or attempt to hire any exempt employee of the Corrections Division Business at the Closing Date.

(d) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 11.11 is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to achieving the intention of the parties as set forth herein, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

#### Section 11.12 Waiver of Jury Trial.

THE PARTIES HERETO HEREBY EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL IN ANY SUIT, ACTION OR PROCEEDING EXISTING UNDER OR RELATING TO THIS AGREEMENT OR ANY OF THE RELATED AGREEMENTS.

Section 11.13 Publicity. No party will issue any press release or make any other public statement relating to the transactions contemplated hereby unless (i) mutually agreed to by the parties hereto, or (ii) required by law, regulation, court order or the rules of any applicable stock exchange or the New York Stock Exchange or of any applicable Governmental Authority and any such release or statement shall be subject to prior review by the parties hereto.

**[Signatures Appear on Following Page]**

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

PROCARE PHARMACY, INC.

By: /s/ Dennis C. Burton  
Name: Dennis C. Burton  
Title: President, CVS ProCare

STADTLANDER OPERATING COMPANY, L.L.C.

By: /s/ Milan A. Sawdei  
Name: Milan A. Sawdei  
Title: Executive Vice President,  
Chief Legal Officer and Secretary

STADTLANDER LICENSING COMPANY, LLC

By: /s/ Milan A. Sawdei  
Name: Milan A. Sawdei  
Title: Executive Vice President,  
Chief Legal Officer and Secretary

STADTLANDER DRUG OF CALIFORNIA, LP

By: /s/ Milan A. Sawdei  
Name: Milan A. Sawdei  
Title: Executive Vice President,  
Chief Legal Officer and Secretary

STADTLANDER DRUG OF HAWAII, LP

By: /s/ Milan A. Sawdei  
Name: Milan A. Sawdei  
Title: Executive Vice President,  
Chief Legal Officer and Secretary

BERGEN BRUNSWIG CORPORATION

By: /s/ Robert E. Martini  
Name: Robert E. Martini  
Title: Chairman and Chief Executive  
Officer

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**THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONSOLIDATED FINANCIAL STATEMENTS OF BERGEN BRUNSWIG CORPORATION FOR THE NINE MONTH PERIOD ENDED JUNE 30, 2000 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.**

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